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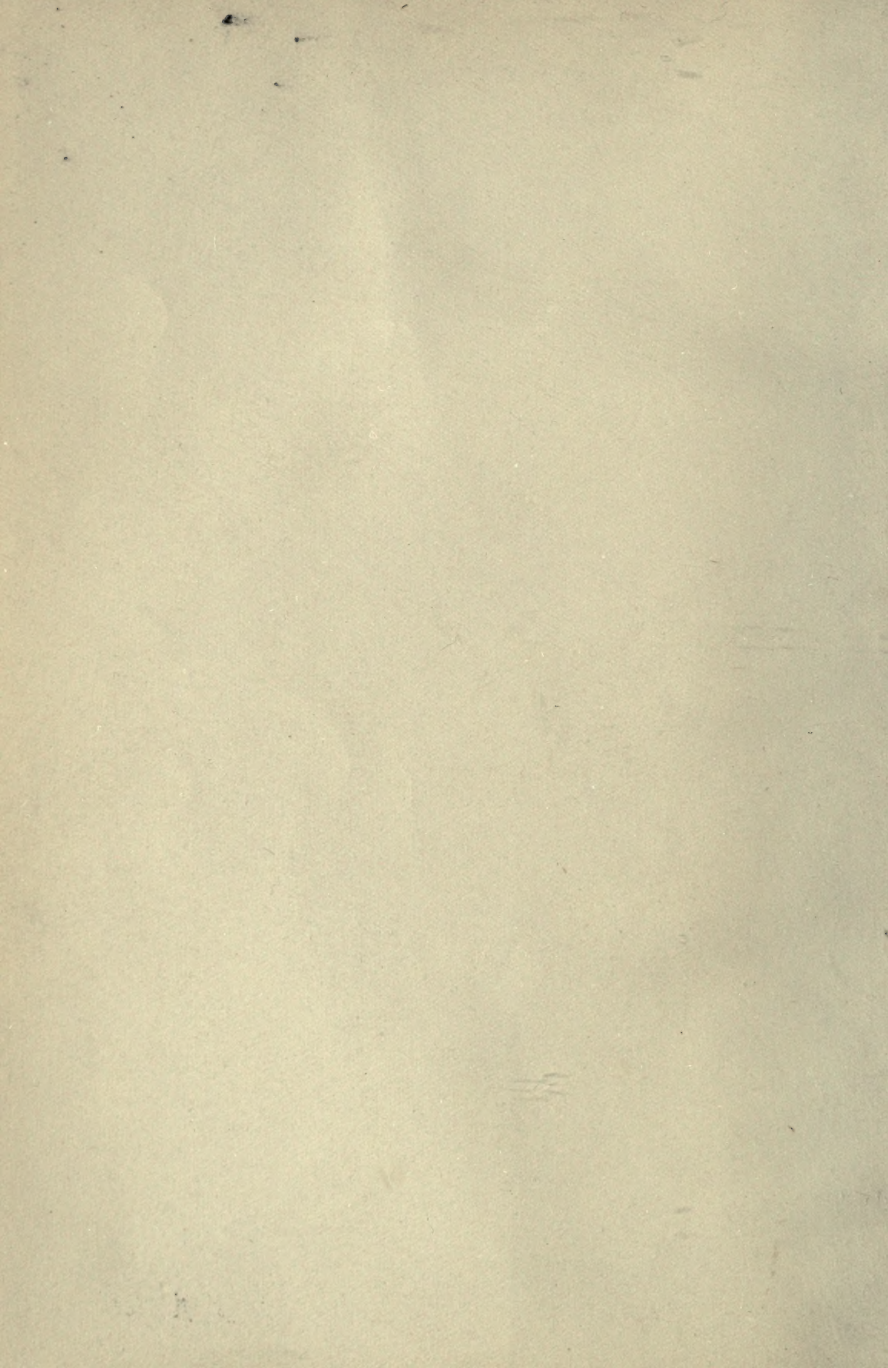
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THE CHAUTAUQUAN

Issued Monthly  
with Illustrations

JUNE—AUGUST 1907

Volume 47.



THE CHAUTAUQUA PRESS

CHAUTAUQUA, NEW YORK

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1906

246470

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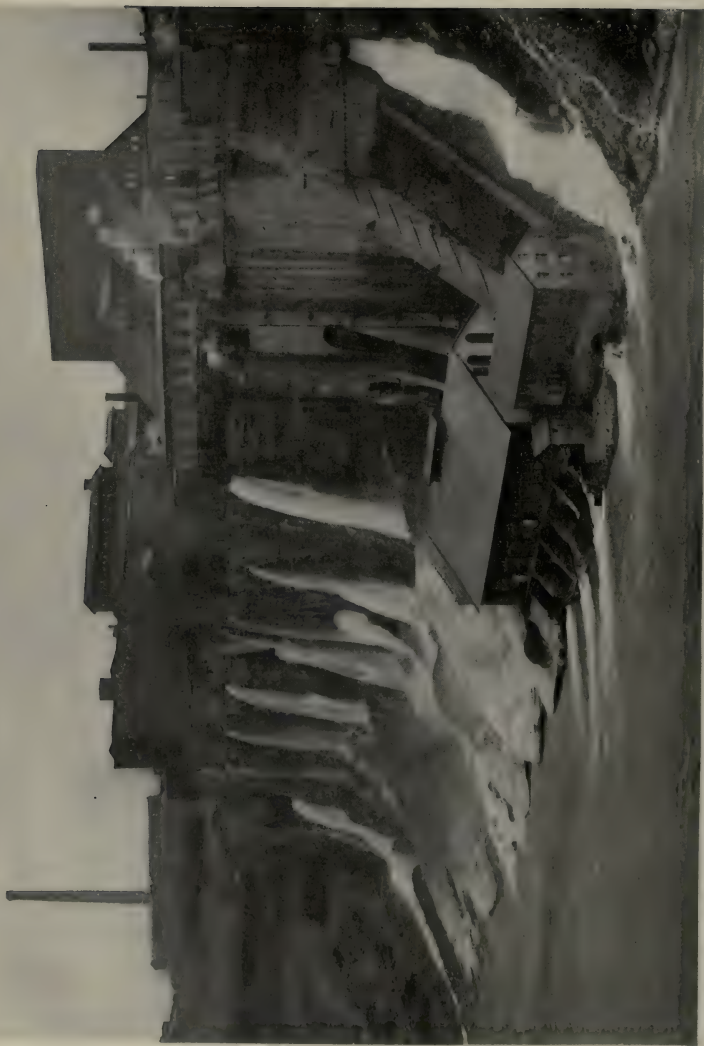
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What the Power Companies Have Done for Niagara—Unsanitary  
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# THE CHAUTAUQUAN

Vol. 47.

AUGUST, 1907.

No. 3



**T**HANKS to Judge Farrar of New Orleans, a Democrat and "fair constructionist," and to President Roosevelt, a new idea has been placed before the country for discussion, in connection with the question of railroad control and regulation. It originated with the former and has been tentatively indorsed by the latter. To some it seems revolutionary and subversive of the whole fabric of our government. It is said to sound the death-knell of state rights and state powers, and to spell empire and federal absolutism.

The doctrine may thus be stated: While the power to regulate interstate commerce is plenary and enables the federal government to control all transportation that is interstate and probably everything that directly or indirectly affects such transportation, that power does not extend to commerce and transportation within the states. Must this whole great field be left to state action—or inaction? No; there is a clause in the Constitution which reaches and covers it, the "post roads" clause; that is, the clause which gives Congress power to establish and maintain post roads. Let the government declare every railroad and steamship line in the country a post road, and the power of regulating its traffic will instantly extend to it, so that the government will be able to do in that sphere all that it is doing or may do in the interstate and foreign commerce field under the commerce clause.

## Highways and Byways

For the power to establish involves the power to construct, own and operate post roads and all other facilities and instrumentalities that are necessary to the mail service, and involves the power to require that all mail carriers shall incorporate under federal laws and submit to regulation. So that, if necessary, the government can compel all carriers to place themselves under its authority. It is argued however, that no such compulsion would be needful, as all carriers would gladly incorporate under federal laws to secure uniformity of regulation and treatment, should the government suggest it.

The alarmed opponents of this new idea ask what there is to prevent federal regulation of street cars and city highways and streets under this same doctrine. They further ask what the application of the post-roads clause in this sense would leave to the states in the matter of railroad regulation. And they declare that the doctrine is preposterous and contrary to the whole spirit of our political system. The courts, they say, would make short work of it, ruling that to establish post-roads means simply to "designate" such roads, not to construct and operate them.

Of course, the construction of the post-roads clause can only be settled by the federal Supreme Court, but during the discussion many interesting historical facts have been brought to light. The clause was a subject of controversy in the early days of the republic. The framers of the constitution did not think it of particular importance. "The Federalist" calls the power to establish post-roads "a harmless power," and such authorities as John Randolph Tucker thought that it would be a fraud on the people to build roads for other purposes under cover of this clause or to regulate commerce by virtue of the grant.

Be this as it may, the immediate exercise of this alleged power has not been proposed by the President. He merely declared it "probable" that the Farrar idea is sound and that even intra-state traffic can be regulated by Congress, if need be. For the present the President limits himself to the elaboration and extension of the policy embodied



in the new railway rate act. In his recent speeches he reiterated his opposition to government ownership of railroads and his determination to remedy abuse by means of effective regulation. While no injustice to present investors is intended, the administration believes in making inflation and overcapitalization of railroads impossible in the future, in basing securities on actual assets, and in guaranteeing the public fair rates and good service. The Harriman disclosures have furnished the strongest argument for legislation against inflation and stock-watering operations and for revaluation of the property of the railroads, and action on these lines is to be strenuously urged by the administration.



## Corruption and Popular Rule

The municipal situation in San Francisco is bad enough, but there is some encouragement in the recent developments for honest friends of good government. They show that the most powerful machines can be overthrown if the upright citizens, or a small group representing them, will fight corruption fearlessly and persistently, and seek the aid of the courts. A few months ago San Francisco seemed "hopeless" to those who knew the extent of the corruption of her officials and those behind them. Today the chief boss, Ruef, is a self-confessed grafter and blackmailer, under sentence of imprisonment, and Mayor Schmitz is a convicted criminal. Ruef was forced to turn state witness and plead guilty to the charge of extorting money from certain restaurant keepers whose license depended on his good will. Schmitz was tried for the same offense and the testimony against him was so clear and strong that the jury unhesitatingly brought in an adverse verdict.

And this is but the beginning of the herculean task of reform. More serious charges against Schmitz, Ruef, the supervisors of the city, and a number of capitalists and leading citizens remain to be tried, and penitentiary

terms, it is hoped, await many of the bribe-givers and bribe-takers.

The people of San Francisco thought that in electing Schmitz they were placing a "labor sympathizer" and "reformer" in office. The trade unions were for Schmitz and his group, and they regarded the municipal government as one that served their proper interests as against an oligarchy. Of course, they have repudiated the faithless mayor and his corrupt and perfidious henchmen. The people of the city are glad that corruption is being exposed and punished, and better times are ahead for poor, much-tried San Francisco. It will have better and cleaner government for a time at least, or as long as the voters bear in mind the painful lessons of the last several months. But here the serious question arises—How long will they keep these lessons in mind? The masses of the people in any democracy are on the side of just government and efficient, honest administration. They are never appealed to in vain on moral issues. But the trouble is that it is very easy to confuse the issues and divert attention from principles to other and lower considerations. As Ambassador Bryce said in a recent address:

"The history of free governments shows that when things go wrong it is not so often from errors of judgment on the part of the people as it is from an excess of party spirit, which has led them to follow blindly an unscrupulous leader, or from an indifference and negligence which has enabled selfish men to pursue their own advantage at the expense of the public."

The causes which have brought shame and trouble to San Francisco are at work all over the country. Graft, indifference to public interest, waste and spoils are evils familiar to most cities, and the way to remedy them is to banish narrow partisanship and cultivate active, earnest attention to public affairs. Crusades and campaigns are good as far as they go, but their effects are temporary and superficial. Eternal vigilance is still the price of good government, and there is no substitute for it though even a



vigilant electorate cannot dispense with proper machinery, honest primary elections, safeguards and methods of controlling, removing and punishing officials.



## The Playground Movement

The first annual convention of the Playground Association of America was held in Chicago in the last days of June. The association was organized in April, 1906, by a group of men and women representing many parts of the country and deeply interested in the question of establishing and multiplying recreation centers and breathing spots in our cities, especially in the congested districts of the great communities. There were several local playground associations in existence but the need of national coöperation was keenly felt by all of them. The purposes of the Playground Association of America are stated in its publications to be these: To study playground construction and administration; to experiment with new features; to give publicity to playground information and ideas; to hold national conventions and play festivals and stimulate general interest in the subject.

Chicago was suggested by President Roosevelt, who welcomed the movement warmly, as the right place for the first annual convention. He expressed the hope that "all our large municipalities would send representatives" to "see the magnificent system that Chicago has erected in its South Park section—one of the most notable civic achievements of any American city." Chicago has two-score parks, "squares," and playgrounds, and some of them are models of their kind that have been greatly admired by visitors from other cities, states and countries, having field-houses, indoor and outdoor gymnasiums, swimming pools, running tracks, and so on, as well as reading rooms, club rooms and other facilities and conveniences. Some of these small parks have areas of 60, 75 and 85 acres, and some are very small, not exceeding 90x250 feet. Additions to these

playgrounds are now planned by the park boards and other authorities, bond issues having been authorized for the purpose\* by the people.

The convention was in every way a notable success. Prominent social workers and philanthropists from all over the country attended, and the local interest was considerable. The discussion at the several sessions took a wide range, and the question was treated from the broad sociological point of view. The speakers considered the relation of rational play and exercise to juvenile delinquency, to vice and filth, to education, to economic well-being, to health and morality, as well as the value of playgrounds in training the young for citizenship and the duties of life by inculcating discipline, order, coöperation, and esprit de corps. The "festival" which followed the formal proceedings displayed the skill of the kindergarten children and the school pupils in games, dancing, gymnastic exercises, drills, and athletics. The report of the convention should be widely read; it is sure to stimulate action by municipalities and private beneficence.



## Woman's Rights and the Woman's Labor

The New York Court of Appeals, the highest tribunal in the state, has affirmed the decision of the lower courts in the case which involved the constitutionality of the statutory prohibition of night work for women in factories, mills and similar establishments. The law provided that women should not be employed between the hours of nine in the evening and six in the morning. In the lower courts the grounds for declaring it invalid were these—that there was no reason to think that night work was unhealthy for women, especially if not unduly prolonged; that the statute was too sweeping, in that even one hour's work at night in a factory was made punishable; that the prohibition did not cover women in tenements and in domestic work or in fashionable society, who abuse their health in various ways, in-



cluding dissipation and amusements; and that the police power of the state, while justifying restriction of the labor of minors or even of women in the interest of public health and morals and the physical vigor of the community, did not justify arbitrary and partial interference with contract and personal rights under the mere guise of protecting health.

This decision was severely criticized by some of the judges in strong minority opinions and by enlightened philanthropists and students of industrial and social problems. These held that the state undoubtedly had the power to restrict or prohibit the labor of women at night, and that the welfare and progress of society notoriously demanded such interference.

Now the Court of Appeals, in affirming the adverse decision, takes even more radical ground than the majority of the lower court did in opposing special legislation for women. Its opinion has attracted a good deal of attention for its matter as well as for its style. The court does not admit that woman is today the ward of the state and in need of peculiar protection. The adult woman, it says, has all the rights and privileges and responsibilities of the adult male citizen, and is entitled to be treated as man's equal in every legal respect. To quote verbatim from the opinion:

Under our laws men and women now stand alike in their constitutional rights, and there is no warrant for making any discrimination between them, with respect to the liberties of persons or of contract. . . .

The right of the State to restrict or regulate the labor and employment of children is unquestionable; but an adult female is not to be regarded as a ward of the State, or in any other light than the man is regarded when the question relates to the business pursuit or calling.

In the gradual course of legislation upon the rights of a woman, in this State she has come to possess all the responsibilities of the man, and she is entitled to be placed on an equality of rights with the man. Considerations of her physical differences are sentimental and find no proper place in the discussion of the constitutionality of the act.

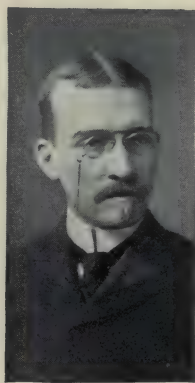
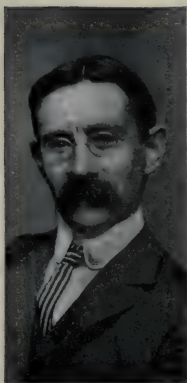
These sentiments have been cordially approved by the

New York press and by many newspapers outside of that state. To some, however, it appears a singular fact that the woman who enjoys "all" the rights and responsibilities of citizenship should be deprived of the right to vote—which is hardly a trifling one—and of the right to serve as juror, to say nothing about the right to sit in legislative bodies. It is also curious that this denial of important political and constitutional rights to women as women should be acquiesced in by men who profess to stand for equality and justice. At any rate, it is rather paradoxical to find that the woman who cannot vote or perform jury duty because she is *not* the equal of man must be allowed to work at night for any number of hours because she *is* the equal of man. The legislature may not protect her health, but it *may* deprive her of many substantial rights of citizenship!



## The Second Peace Conference at Work

Once more the powers of the civilized world are in international conference at The Hague to consider questions of war and peace, the promotion of humanity and good will among the nations and the mitigation of the cruelties of war when it comes. On the eve of the opening of the conference pessimistic feelings prevailed. Some ardent lovers of peace even complained that the whole affair was a mockery, inasmuch as war, not peace topics, were about to be discussed and acted upon. The speech of the Russian ambassador at Paris, Nelidoff, who was made president of the conference in recognition of the Tzar's services to the cause of international peace, was not calculated to dissipate the gloomy feelings of these skeptics. It was full of ifs and buts, of reservations, of distinctions between the ideal and the possible, the academic and the practical. War, M. Nelidoff told the conference, would never be abolished, though it was noble to dream of that ideal. Nations, like individuals, would always have their differences and quarrels, and on questions of honor, sovereignty and essential

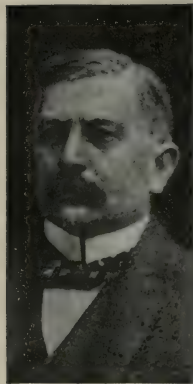


## PROMINENT FIGURES IN THE CAMPAIGN FOR THE PRESERVATION OF NIAGARA FALLS

J. Horace McFarland, President of the American Civic Association; President Roosevelt; Clinton Rogers Woodruff, Secretary of the American Civic Association.

Secretary of State Root; Secretary of War Taft; Congressman Burton, Chairman of the Rivers and Harbors Committee of the House of Representatives.





PROMINENT FIGURES IN THE CAMPAIGN FOR THE PRESERVATION OF  
NIAGARA FALLS

Edward Hagaman Hall, Secretary of the American Scenic and Historic Preservation Society; Senator Lodge of Massachusetts; Ex-Attorney General Griggs.

Attorney General Knox; Francis Lynde Stetson and General Francis V. Greene, prominent Counsel for the power companies.

interest no power would recognize any other authority than its own judgment and will. He was understood as intending to "throw cold water" on the introduction of the question of reducing armaments and war budgets, and on the question of doing away with the forcible collection of private debts arising from contracts between nations and corporations or individuals. The fact that individuals are compelled to take all their differences into courts of justice and submit to "arbitration,"—except where the duel is still tolerated—the ambassador ignored.

However, his speech produced no deep effect, and at the very next general session two gratifying things happened. The United States and England formally reserved the right to offer in the course of the conference a resolution dealing with the armament-limitation question, and the former country further reserved the right to bring up the "Drago doctrine"—that is, the rule against forcible collection of private debts. It was officially explained by the American delegates that the "reservation" of the former question meant simply that the United States might see fit to introduce it, should the European powers, whom it primarily concerns, neglect to do so. There is thus only a possibility, not a certainty, of its discussion. The Drago doctrine, on the other hand, is sure to be taken up in some form, and some of the old-world powers are more friendly to it than it has been supposed they would be.

The committees of the conference, which are to do the real work, were promptly appointed and many proposals have already been submitted to them. Germany has proposed an international prize court to settle appeals from national courts of this kind. In other ways, too, she has shown herself surprisingly progressive and friendly to the purpose of the conference—perhaps, it is suggested by some, in order to remove the bad impression that was made by her pointed opposition to the armament-limitation idea.

It is now felt very generally that the conference may prove a notable success. All the powers are anxious

to put their best foot forward, to demonstrate their sincere belief in peace and arbitration. The foundation may be laid for more comprehensive treaties of arbitration and better facilities for investigating international disputes, for strengthening the international court and limiting, as it were, the area of war. The other important topics are: The treatment of private property at sea when it is not contraband, bombardment of unfortified cities and ports, the use of balloons and other agents of destruction in war, the laying of mines, notice of hostilities, and so on. The United States is assuming a very advanced position on each of these questions.



## The End of the Second Russian Douma

Short and troubled was the career of the second Russian parliament, and its fate did not materially differ from that of the first. It had few moments of peace and security; from the first rumors and threats circulated freely regarding its "undesirable" character from the view-point of the Tzar, the court clique and the aggressive bureaucracy, and the certainty of early dissolution. When, therefore, the decree of dismissal came in the middle of June no one was taken by surprise; though regret was wide and general among the liberal and enlightened people of the civilized world.

The dissolution was a grave blunder, graver even than was the dismissal of the first douma. It was a blunder because the majority did not deserve the criticism which the government made against it in the manifesto that explained and executed its coup, and because it is not true that the second douma had proved itself revolutionary, incapable of constructive and practical work, and indisposed to co-operate with the ministry. On the contrary, the douma, thanks to the constitutional democratic party and its allies, temporary or permanent, had succeeded in taming the extremists on the Left, in bringing about a series of important con-



cessions to the government and in applying an intelligent and consistent policy of conservative liberalism and rational opportunism. Many members, no doubt, were openly hostile to the government and revolutionary in their sympathies and actions; but a parliament is judged by the majority that controls it, not by shifting minorities which obstruct and oppose the majority's policies. According to all honest tests, the second douma was moderate, and serviceable to Russia, though when it first met, its composition showed that it was more radical and more anti-governmental than its predecessor. It became prudent under the discipline of necessity, because it wished to prolong its existence and prevent reaction.

The immediate and ostensible pretext for the dissolution was the refusal by the douma to expel, without inquiry and deliberation, fifty-seven of its members against whom the government preferred charges of conspiracy and high treason. These members belonged to the social democratic faction, and some of them had participated in a secret London congress of that party, a congress that could not be held in Russia owing to police bureaucratic interferences and persecution, and that was held for the purpose of determining the future policies and tactics of the party. The social democrats are not monarchists in theory, as they admit; they believe in a democratic republic; but they have other aims for the present and are working for reforms that are feasible now.

The government had no valid evidence against the deputies whom it wished expelled from the douma in order that it might try them for their alleged crimes. The indictment it read to the douma was vague, flimsy and argumentative. It failed to distinguish between opinions and acts, between agitation against a whole system and plotting against particular persons in power. The douma could not without self-stultification and treachery exclude members on the vague charges of a lawless and arbitrary bureaucracy. It accordingly referred the matter to a committee in spite of an ultimatum from the premier. The government did

not even await the decision of the committee; dissolution promptly followed. It then, to excuse its action, preferred various other charges against the douma, but they were either slight and inconsequential, or else they involved the minority, not the majority, of the body.

The termination of the second douma's existence, however, would not perhaps be a matter of great moment, especially in view of the ordering by the Tzar of new elections almost immediately—in September—and the convoking of the third parliament in November. But the reactionaries and selfish bureaucrats did not work for mere dissolution; they hoped and schemed to overthrow the whole constitutional experiment, to abolish the douma as an institution and revert to absolutism. That was the great danger, and that has again been averted. There is to be another douma, and reaction is defeated on the essential issue.

Yet one feature of the dissolution was grave and alarming, and certainly meant a material victory for the reactionaries. The Tzar deliberately violated the fundamental laws he had himself granted, and modified the electoral law in the interest of the landowners and the supposed conservative elements. The "constitution" provides that no change in suffrage system shall be made without the approval and favorable action of the douma itself, and therefore the Tzar's ukase is a usurpation of power and a reversion to autocratic rule—a tyrannical or anarchical step taken in the name of law and order. If one of the fundamental laws may be changed by arbitrary decree, why not another, why not all of them? In truth, the whole Russian "constitution" becomes a farce and sham in view of this precedent. Certainly the reactionaries have good ground for rejoicing, and the liberals for apprehension and pessimism.

At the same time it should be recognized that there is greater significance in the fact that the douma as an institution has not been attacked, and that the elections have not been postponed indefinitely, than in the fact that the suffrage law has been tampered with and impaired. There is some encouragement in the thought that the upholders

of the old order have not dared to go further than they did.

As to the electoral changes, they are unfair and grotesque, but not radical. No class is directly disfranchised, and no new suffrage tests are imposed. The peasants and the workmen are still to have considerable representation in the douma. But some cities have lost their direct representation and others have been unduly favored. Some disturbed frontier districts have been temporarily deprived of their political rights. Alien elements are to have representation restricted, and landed property is given additional representation in a characteristically crude and arbitrary way. All the changes savor of discrimination and bureaucratic caprice, and the intention is plain. It is the hope of the government that the next douma will be loyal and conservative, or obedient and timid, and that disaffected workmen and intellectuals will be shorn of their strength. In this, however, the government may find itself deceived and mistaken. There are good observers who think the electoral changes insufficient to produce any perceptible difference in the composition and spirit of the douma. In the event of this proving to be the case, will the law again be despotically modified?



### New Difficulties with Japan

The settlement of the San Francisco-Japanese school question did not dispose of all the troublesome issues between the United States and the Land of the Rising Sun. Emigration, especially of coolies, Japanese citizenship under our laws, American rights in Japan, etc., remained outstanding, and everybody understood that in dealing with them much tact and diplomatic skill would be required.

For not only are the questions in themselves rather difficult, but they are further complicated by political conditions. In Japan, as in this country, there are parties to "make capital" out of such matters, to attack the administration for alleged sins of omission or commission, and to



“play politics” generally. And there are sensational newspapers in Japan, as here, to magnify trivial incidents, clamor for “action” where patience is needed, sound warnings and create noise and confusion for the sake of popularity and profit.

These facts largely explain the “new trouble” with Japan which has threatened to assume an acute form and has led to a good deal of wild talk about war with that power. In connection with the labor controversies, strikes and political confusion in San Francisco there was an attack on a “non-union” Japanese restaurant and bathing-house. The part which racial prejudice played in that affair is not certain even now, but even if it was considerable, it hardly justified angry denunciation of the United States and demands for sharp protests by the government of Japan. Such, however, were indulged in by the opposition press and party, and serious popular unrest resulted.

It is right for Japan to demand equal protection for her subjects and the enforcement of all their treaty rights. But it is foolish and mischievous to magnify incidents of slight or purely local importance and to jump to the conclusion that the United States cannot or will not do justice to Japanese immigrants or residents where the state or municipal authorities display weakness or inefficiency.

The San Francisco incident has been investigated for the State Department, and it appears that a suit for damages against the city will lie and afford a complete remedy to the injured and aggrieved plaintiffs. The police did not do its duty largely on account of the railroad and other strikes the city was then suffering from; but there was no malice or reckless motive behind the inaction of the local authorities.

Fortunately the Japanese government understood the situation and did not permit the clamor of politicians and jingoes to influence its course toward the United States. Our assurances were received with confidence and good faith, and the fire-eating editors were cautioned by the ministry to restrain the impetuosity of their Hotspurs.

In this country few sane men in public or private life believed for a moment that danger of war was imminent or grave. Not only had Japan no cause for war, but her finances are not in a condition to permit her to entertain the thought of another war at this time or in the near future. Still, this would not excuse any unfairness on our part, and none has been intended. The unfortunate feature of the whole misdirected and sensational anti-American campaign in Japan is that the masses of the people have grown suspicious and unfriendly, so that diplomatic questions needing early attention are likely to encounter prejudice and misapprehension and suffer delay.



## Niagara Preservation Number of The Chautauquan

How much of Niagara Falls would be left if the power development companies should get what they want?

How much have they taken away from the Falls already?

What proportion of the water fall will present laws allow to be taken?

Who is to say how much water may be diverted for commercial purposes without impairing the beauty of Niagara?

To whom do the Falls belong, anyway?  
These are some of the questions which have induced us to prepare this special Niagara Preservation Number of THE CHAUTAUQUAN.

Most people know in a general way that a cry was raised last year that there was danger of the destruction of Niagara Falls. Perhaps they know that a law was passed by Congress placing the grants of power diversion

under Secretary Taft. But comparatively few people have any idea of the facts regarding power development, actual and proposed; the claims which the power companies have put forth; what has been actually accomplished in the way of temporary restrictions; the pitting of untiring organized commercialism against the more or less fitful expressions of the desire of the people that this national wonder of the world shall be preserved without impairment of its grandeur and beauty.

On the following pages will be found an account of the campaign which resulted in the passage of the Burton bill for the preservation of Niagara, limited to three years.

Compare the estimates of the actual depth of the present flow of water over the crest of the Falls by interested and uninterested observers, and then calculate for yourself how much you think can be safely diverted.

Observe the demands for the Chicago Drainage Canal project and the latest claimant for power from the Rapids. Danger is by no means past with the enactment of the Burton bill.

The arguments made to show that control of Niagara rests with the National Government are especially interesting. And the light thrown upon the international phases of the question of controlling this boundary stream are pertinent to diplomatic negotiations for a treaty with Canada now in progress.

The information presented in this issue of THE CHAUTAUQUAN is for the most part buried in different government reports. Its importance to the public is obvious, and we believe the publication of it will constitute a distinct public service.



# A Brief Summary of the Niagara Campaign

By J. Horace McFarland

President of the American Civic Association.

THE essence of the movement to preserve the scenic grandeur of Niagara Falls, it seems to me, lies in the deep regard evidenced by people all over the United States, and indeed all over the world, for this great natural spectacle. In the campaign for the preservation of the Falls it has been merely necessary to bring to the attention of the people the menace of electric development to the integrity of the cataract to call out a hearty protest.

It has been the function of the American Civic Association, first, to direct attention to the national importance, indeed the international importance, of Niagara Falls, and, next, to focus the protests so that they would reach the proper persons and not be dissipated in useless resolutions or petitions.

It was during the early fall of 1905 that attention was called in a widely circulated magazine to the danger to Niagara Falls, and the beginning of the national movement of protest, brought about by directing appeals for the saving of Niagara Falls to the President of the United States and to Earl Grey, Governor General of Canada, thus took account of the international relation of the Niagara River.

The legal rights of the United States and the international relation of the Niagara River as a boundary stream were presented at the Cleveland meeting of the American Civic Association by Volney Rogers of Youngstown, Ohio, after an appeal by the President of the Association at that time for action in defence of the Falls.

The dignified resolutions telegraphed to President Roosevelt and to Earl Grey brought from the former an immediate response in the way of a reference to his legal and diplomatic advisers. Up to this time nothing had been said to indicate that the United States had any actual

ground for interference with the grants mostly freely given to the power companies by the state of New York.

In rapid succession followed a visit to the President, in consequence of which he made a pointed and emphatic reference to the necessity for preserving Niagara Falls "in all their grandeur" in his message; letters between the Merchants' Association and Attorney-General Moody emphasizing the national jurisdiction; another urgent visit to the President; the discovery that the report of the International Waterways Commission, while properly regarding the national importance of Niagara Falls, yet recommended the vitalizing by Federal legislation of practically all the power grants on the American side; the instant and emphatic protest personally presented to the President by the officers of the American Civic Association and the Merchants' Association of New York and the prompt change of the bill about to be introduced; the hearings before the Rivers and Harbors Committee of the House, at which all the now thoroughly alarmed power interests were represented by multiplied and eminent counsel, and the interests of the people were handled, under the direction of the American Civic Association, by several philanthropic organizations.

When the Burton Bill was passed, after having been viciously attacked and radically changed in form, and when it was signed by the President, June 29, it appeared that at least the outworks had been won, though not in a permanent way, as the provisions of the Burton Bill extend but three years from June 29, 1906.

Secretary of War Taft, in whose custody the Burton Bill placed the Falls, promptly took up his work, and at a hearing held in Niagara Falls July 12, 1906, the side of the people was represented by one person only, the President of the American Civic Association, while some twenty lawyers, including some of the most expensive legal talent in America, pleaded for privileges, each one denying any desire or thought of interfering with Niagara Falls while yet wanting just as much of it as the intakes, turbines and

generators of his company could use. On the same memorable day, the Secretary of War made a personal inspection of all the plants in complete detail, descending even under Horseshoe Fall into the tunnel which has reached to recesses never before penetrated by man, in the very heart of this great cataract. By his kindly insistence, the President of the American Civic Association was permitted to join in this inspection.

Then followed the preliminary order giving to the power companies just what they were then using, with no promise for the future, and recognizing in a way most distasteful to the attorneys of the power companies the place and importance of the protest urged by the American Civic Association, contemptuously designated in his address on July 14 as "an irresponsible organization" by Mr. Francis Lynde Stetson of the Niagara Falls Power Company.

The question of the admission of electric power generated in Canada from water of Niagara Falls was the next point in the battle. A thrice postponed hearing was held November 26, after the members of the American Civic Association and every other organization which could be galvanized into practical action had rained letters and protests upon the Secretary of War for three weeks to his distinct annoyance, and somewhat to his astonishment! At this hearing protest was made against the admission of any electricity from Canada, on esthetic and diplomatic grounds. Opposed to the small gathering of those interested in the fate of the Falls, which included representatives not only of the American Civic Association but of the American Scenic and Historic Preservation Society, the Merchants' Association of New York, the New York State Reservation of Niagara and the Chamber of Commerce of the State of New York, was a still more formidable array of eminent counsel, together with engineers and promoters of the various power interests and those interested in the commercial developments at Niagara Falls and in Buffalo. Mayor Cutler of Niagara Falls was there, he who had disgraced his office by causing his council to pass and endorse



## The Niagara Campaign

a set of wildly objurgatory resolutions calling all the objectors to the development of Niagara power cranks and fools, and indicating the President of the American Civic Association as either a knave or a fool.

At this hearing occurred the incident which seemed to be the only thing of moment to the Washington representative of the Associated Press—a showing of resentment by Secretary Taft at implied criticism of the army engineers, who, while making able and impartial reports upon the actual conditions at Niagara Falls, seemed continually to be considering the financial interests of the power companies as of more importance than the scenic possessions of the American people.

The criticism by Secretary Taft was but passing in its character, and he heeded the representations of the protestants and gave full time and opportunity for the development of the arguments advanced,—indeed accommodating himself entirely to their convenience in the matter of time at the hearing.

At the July 12 hearing at Niagara Falls, the Secretary's attention was called with care and insistence to the abominable conditions created below the Steel-arch bridge by the development of the Niagara Falls Hydraulic Power and Manufacturing Company and its tenants. This had been reiterated in the brief presented at the November hearing, at which time also his attention was called to reports being circulated as to a community of interest between the various power companies tending toward large prices for Niagara electricity in America as compared with those being obtained under governmental supervision in Canada.

At no time had we lost sight of the importance of fostering the diplomatic negotiations which it is hoped will eventually result in a treaty for the efficient preservation of Niagara Falls. An interview with Secretary Root and continual correspondence with him kept us posted as to the rather discouraging conditions, and part of the insistence to the Secretary of War at the November 26 hearing was upon the diplomatic feature of the case.

January 14, 1907, there occurred another hearing, at which the American Civic Association was represented but not in an important way. The hearing was for the purpose of considering the application of the Chicago Sanitary District for the diversion of an enormous amount of water from Lake Michigan, ostensibly to complete the great Chicago Drainage Canal, but actually to provide a deep waterway to the Mississippi River and to develop electric power from the use of water en route. It developed incidentally at this time that nearly a million and a half dollars had been spent by the Chicago officials upon the power scheme, though it may be well understood that they gave no publicity to that fact.

The lack of any necessity for special protest on the part of the American Civic Association at this meeting was evidenced in the presence of a large array of attorneys, engineers and shipping authorities representing the sixty-five million ton shipping interests of the Great Lakes, substantially menaced by the proposed diversion from Lake Michigan of enough water to lower the level of the Great Lakes except Superior and their connecting rivers and the harbors along the lakes, both Canadian and American, to an extent of between six inches and a foot. It was then developed that Chicago was assuming a most remarkable attitude of defiance of all the rest of the world. Mr. Robert R. McCormick, the President of the Chicago Sanitary District, characterized all who oppose the Chicago schemes as "blinded by prejudice and ignorance," and further developed the idea that it was an astonishing bit of impudence for any one to object to anything which Chicago at any time might want, regardless of the rights of the rest of the world! Yet Chicago itself was strongly represented in the lake shippers present, whose commercial interests were thus threatened. Again there was acid criticism of the army engineers, but this time from Mr. McCormick. The outcome of this hearing has not yet been published, but it is deemed improbable that Secretary Taft will give to Chicago more than the 10,000 cubic feet per second assigned for the

Drainage Canal by the International Waterways Commission, all of which is abstracted from the Niagara River and prevented from falling over the great precipice.

Just a few days after this hearing there was published the memorable "opinion" of Secretary Taft, giving his decision in regard to the use of water on the American side and to the admission of electric power from Canada. While the Secretary permitted the use of water and admitted power to the minimum extent mentioned in the Burton Bill, and while the American Civic Association had opposed the admission of any power though not making any opposition to the use of the water already being diverted on the American side, yet his decision, fair and considerate of all parties taking account of the present despoilment of Niagara and yet giving consideration to the vast sums invested there, is accepted by us as distinctly a proper one and as a very great triumph, in fact. It cuts down the diversion of water on both sides of the river through the control exercised over the Canadian situation by the fact that the Canadians cannot sell in their own country much of the power they plan to develop, and that therefore the United States market, controlled by the Federal government, dominates the situation.

Moreover, this decision recognizes most efficiently the protest of the American Civic Association against the unsightly conditions created by the power development at Niagara as above mentioned, for the offending power company is ordered to clean up; and to give it information as to what is expected of it to obviate a condition which the Secretary mentioned as equivalent to an "ill-kept back-yard," a commission, including Messrs. Charles F. McKim, Frank D. Millet and Frederick Law Olmsted, Jr., was appointed. The latter gentleman is an enthusiastic member of the American Civic Association, and thus fully represents it in this important work.

The Secretary took account also of the possibility of an injurious combination for increase of prices, and gave fair warning that presentation to him of evidence of such



a combination would be considered in connection with a reopening of the permits, all of which, it may be said, are revocable at his pleasure.

The Burton Bill provides that after six months the Secretary may consider the granting of further permits and the admission of additional power from Canada if in his judgment the scenic glory of the Falls has not been interfered with. While he could not properly declare his intention to refuse consideration of any requests for additional privileges, he did, in response to a letter written by the President of the American Civic Association, say that any such later application would be considered without the slightest reference to any financial investments said to have been made in preparation. He said, in effect, "any man who puts a dollar in after this does it at his own risk." This is fair notice that the way of the power advocate will not be very smooth!

### Imminent Danger to the Rapids

In the last days of the Fifty-ninth Congress, a corporation of New York state had introduced, by Colonel Alexander of Buffalo, a bill amending the Burton Bill by permitting its beneficiary to take 40,000 cubic feet per second from the Niagara River below the Falls and from the Whirlpool Rapids. As the Burton Bill very properly recognizes the value of the scenic beauty of the Rapids as well as the Falls, and as the whole of Niagara is the people's possession, this bill was promptly combatted without any great publicity, and it was buried in committee, dying there. Arrangements were made for a sharp scrutiny of appropriation bills in the House and the Senate, so that this assault, which would have meant an opportunity to develop power of a value estimated between four and six million dollars per year, should not be made successful through the medium of a rider upon an appropriation bill.

Meanwhile, efforts are constantly being made to foster the treaty negotiations, and to foster in Canada public sentiment favorable to Niagara preservation.

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[“Just as this article goes to press, we are advised by President McFarland, that the Niagara question seems to be entering a new phase, consequent upon the recognition by some of the present large power interests at Niagara of the general sentiment of the American people for Niagara preservation. Several of the power companies have made considerable expenditures to preserve the beauty of the surroundings, and should the forces of public opinion in America continue to be manifested for the real preservation of Niagara scenery, it is not considered impossible that the attitude of hostility at Niagara, maintained hitherto by the power interests and by the municipality as a whole, may be changed to an attitude of sincere interest in making a great international scenic preserve between Lake Erie and Lake Ontario, while permitting a moderate and safe use of the water for power production.—EDITOR THE CHAUTAUQUAN.]

# The Voice of the People

**W**HEN it became known to the public at large that there was real danger to the natural beauty of Niagara Falls as a wonder of the world, such a bombardment of senators, congressmen and national officials at Washington occurred that there was no mistaking the sentiment of the American people.

Personal letters poured in upon the national legislators in behalf of "preservation" by means of the Burton bill. Among the United States Senators and Representatives who answered favorably were:

## SENATORS FAVORING.

P. C. Knox, Pennsylvania.	Isidor Rayner, Maryland.
S. B. Elkins, West Virginia.	A. J. Beveridge, Indiana.
J. B. Frazier, Tennessee.	W. M. Crane, Massachusetts.
H. C. Lodge, Massachusetts.	Charles Dick, Ohio.
Boies Penrose, Pennsylvania.	William P. Frye, Maine.
W. B. Allison, Iowa.	T. C. Platt, New York.
J. A. Hemenway, Indiana.	John W. Daniel, Virginia.
V. P. C. W. Fairbanks, Indiana.	Thomas S. Martin, Virginia.
S. M. Cullom, Illinois.	John C. Spooner, Wisconsin.

## REPRESENTATIVES FAVORING.

M. E. Olmstead, Pennsylvania.	G. N. Haugen, Iowa.
G. E. Mouser, Ohio.	B. D. Sickels, New York.
W. W. Hale, Tennessee.	George A. Pearce, Maryland.
R. M. Nevin, Ohio.	Magar Shirley, Kentucky.
Charles F. Scott, Kansas.	W. Bourke Cochran, New York.
Robert Adams, Pennsylvania.	Jesse Overstreet, Indiana.
D. F. Lafean, Pennsylvania.	J. W. McCall, Massachusetts.
John Dalzell, Pennsylvania.	John W. Weeks, Massachusetts.
S. R. Dresser, Pennsylvania.	Washington Gardner, Michigan.
H. Bard Cassell, Pennsylvania.	Herbert Parsons, New York.
H. H. Bingham, Pennsylvania.	J. Adam Bede, Minnesota.
R. C. Moon.	George P. Lawrence, Massachusetts.
James Burke.	W. L. Jones, Washington.
Newlin W. Gilbert, Indiana.	J. E. Ransdell, Louisiana.
William Sulzer, New York.	G. W. D. McCarthy, Pennsylvania.
J. V. Olcott, New York.	R. P. Bishop, Michigan.
Wm. H. Wiley, New York.	R. E. Lester, Georgia.
J. E. Andrus.	H. S. Boutell, Illinois.
W. E. Jones, Washington.	John Lamb, Virginia.
W. E. Humphrey, Washington.	J. H. Davidson, Wisconsin.
Francis W. Cushman, Washington.	J. S. Sherman, New York.
John Gill, Jr., Maryland.	A. L. Bates, Pennsylvania.
James R. Mann, Illinois.	
J. F. C. Talbott, Maryland.	



## The Voice of the People

## FROM SENATORS AND CONGRESSMEN.

The destruction of the beauty and majesty of the Falls would be a national misfortune.

C. W. Fairbanks,  
Vice-President, Indiana.

It will give me pleasure to support this worthy object in every way possible.

W. M. Crane, Senator Massachusetts.

I am heartily in accord with the movement to preserve Niagara Falls, and intend to do everything in my power to that end.

P. C. Knox, Senator Pennsylvania.

I am most heartily in favor of the passage of the unamended bill, and I shall do what I can to secure favorable action upon it as introduced.

H. C. Lodge, Senator Massachusetts.

I am in hearty sympathy with the spirit of the proposition and will earnestly support legislation having that object in view.

Boies Penrose, Senator Pennsylvania.

I heartily agree with you that it would be a disgrace to sacrifice Niagara for commercial purposes. I shall do everything I can to secure favorable consideration for the Burton Bill.

S. B. Elkins, Senator West Virginia.

I think it is an outrage that any action, looking to the destruction of the falls should be allowed, and I shall be for everything that will prevent it, and is within our power to do.

Shelby Cullom, Senator Illinois.

I am in complete sympathy with you in this matter, and will certainly take pleasure in doing anything I can to bring about the enactment of proper legislation.

J. A. Hemenway,  
Senator Indiana.

I will gladly do anything I can to assist in accomplishing such legislation as will preserve this great natural beauty.

Gilbert N. Haugen, Representative Iowa.

You can be quite sure that I will do anything in my power to prevent the destruction or disfigurement of Niagara Falls.

W. Bourke Cochran, Representative New York.

I am in favor of the Government acquiring these falls, and will so vote should opportunity present.

W. E. Humphrey,  
Representative Washington.

I have always been opposed to the desecration or destruction of Niagara Falls and when I was a member of the Legislature stopped the passage of any bill to injure the falls in any way.

You can rest assured that I will do everything I can as a member of Congress to put a stop to it.

William Sulzer,  
Representative New York.

## Flood of Letters Received by Secretary of War Taft

**I**T took a man fourteen days and evenings and a typewriter nine days to make a list of the addresses, and some kind of classification of expressions from people who wrote to the Secretary of War regarding the use of the water power of Niagara Falls for electric power purposes. He found in the files in round numbers:

1,450 letters of protest;  
5,000 postal cards of protest;  
100 letters favoring increased grant of power;  
35 petitions.

Mr. James T. Metcalf who classified the immense correspondence received submitted the following analysis of the various communications:

The postals proved to average better than I anticipated. The English language might be used more vigorously and tersely than in some of these cards, but I doubt whether it has been so employed. Many are wonderful examples of forcible expression gained by using few words.

Concerning the letters the only classification of practicable value was simply to separate them under two heads, the subject matter being:

Class No. 1.—Those making specific request that the War Department refuse to admit electric power from Canada, and, generally, those which covered the subject of restriction of power on either the American or Canadian sides.

Class No. 2.—Those which specifically or in a general way requested the Department to "preserve" and "save" the Falls; and such other letters as could not be properly included in the first-named class.

The division shows about 650 classed as No. 1, and 800 as No. 2.

Those letters favoring the interests of the power companies were, with perhaps a half-dozen exceptions, from citizens of the village of Niagara Falls, or representatives of business interests of that place. I noted that the greater number of these letters were identical in text, simply having different signatures. It does not seem necessary that I should make further report regarding these.

Obviously many of the letters classified in the manner stated covered both subjects, hence this classification was necessarily arbitrary, but the division is sufficiently accurate to enable you to ascertain the relative proportion.

The correspondence is unique, in that the writers are from all walks of life. But much the greater number are persons of evidently high social, business or professional standing. They are ministers, bankers, lawyers, artists, civil engineers, teachers, editors, superintendents of parks, instructors in universities and schools of various kinds, etc.

Business men, representing all lines of finance, trade, etc., students of high-class colleges, and pupils of public schools, are represented in large numbers.

It would seem that nearly all the civic, professional, social, historical, and religious clubs and organizations of the country are represented. It would not be practicable to show the number of individuals belonging to these various bodies, and whose views are in most cases embodied in letters counted simply as from one person, but this membership covers respectively thousands, hundreds and scores of the very best people of the land. It may be assumed, therefore, that while this correspondence names only a few thousands, it is intended to represent the wishes of many thousands.

I have been profoundly impressed with the tone of these letters, which blend indignation, protest, appeal and prayer with eloquence, sentiment, patriotism, fervor and loyalty to country and mankind. They blend sentiment with business; the love of nature with recognition of the handiwork of the Creator; keen indignation with stern protest.

To the personality of this large number who show such ardent interest in this inspiring subject I desire to direct your special attention. I would estimate that women are the writers of about one-third of the letters, and these ladies, as is clearly shown by their letters, are many of the highest social position—those of wealth, education, culture, refinement and highest personal worth.

It is an honor to your association that it has so successfully enlisted the coöperation of the very best people of the land—of many of those most influential in their respective communities, persons of business, professional and social distinction, and I submit that the views of such persons are worthy of most profound respect and confidence.

I have not deemed it expedient to include in the list of names, nor in the aggregate number of letters received, those letters from children; but it is very clear that their interest has been aroused, and their humble appeals in the direction of love of country and nature should also have ample consideration.



Many persons mentioning the fact of their travels in foreign lands, speak of the impressions gained of Niagara by foreigners, and compare favorably the grandeur of the Falls with all other attractions of the world.

The sentiment which in all these years attracted newly-wedded couples to the Falls causes many the keenest desire that their children shall likewise appreciate the beauty and magnificence of this world-famous spot.

Many who reside in the near vicinity, and others who make it a practice to visit the Falls annually, or frequently, have gained from personal observation the knowledge that depletion of water for present manufacturing purposes is "shamefully apparent," and they keenly deprecate that which they term "desecration." It is noticeable that the use of this word is generally meant as the view of the writer that anything that detracts from the natural beauty of the world's greatest attraction is in that sense a "desecration" of the Creator's work.

## Popular Expressions of Opinion Upon the Desirability of Preserving Niagara Falls

From the remarkable mass of correspondence sent from every where to Secretary Taft the following have been selected to give some idea of the attitude of the people regarding Niagara prservation:

Mrs. and Robert Smith:

Spent "honeymoon" at Niagara;—and beg you to *preserve* its full *grandeur* for our golden wedding in 1956!

Harvard University—Paul H. Harris:

Our national pride as well as our appreciation of nature's wonders should protest against the further spoliation of the Falls; and our great wealth as a nation could be used if necessary to enforce this protest. We could buy back the Falls, to preserve them for all time, as a monument to our love of nature, and our disapproval of measuring all of our national resources in terms of commercial and industrial success.

Portland, Me.—Chas F. Flagg, Banker:

It seems to me that our rich and powerful country is, in a way on trial before all the world as to whether it values dollars more than the glory of Niagara.

Boston—Stephen Child, Landscape Architect:

It is absurd to believe that the United States is not rich enough to control this great natural wonder and beauty, and to buy back, if necessary, and own Niagara Falls undamaged, regardless of any selfish corporate interests, and all right-minded, patriotic, beauty-loving citizens of this country look to you as the man to put a stop to this matter now, once and for all. May you

be privileged to have the honor of placing the seal of approval upon a decision in regard to this matter which shall preserve for all time Niagara Falls in their entirety to the American people.

Boston—G. F. Schwartz:

As a professional forester and landscape architect, but even more as a simple lover of landscape, I appeal for the preservation of the falls. It will be a source of pain and regret to the generations that shall come after us if the power of these impressive falls should be misapplied.

Providence—Lydia C. Beckwith:

Niagara Falls should be kept, as it was originally, one of the grandest spots in the world. If the American people were appealed to they would now give enough money to buy up and root out all the business interests which in being allowed to ruin the beauty of Niagara are disgracing our government.

Madison, Wis.—Martha M. Buell, Pres. Wisconsin Women's Clubs:

Preserve to us and to our children and to this great commonwealth that God-given inheritance, Niagara Falls. May it remain in its entirety, volume and majesty to inspire not only this nation but those of all parts of the globe.

Coshasset, Mass.—Wm. C. Appleton:

It does not seem possible that this can be done without greatly injuring the beauty of the falls, an injury which once done can scarcely be undone, owing to the rights of vested interests. This is a case, if here ever was one, where we should go slowly. No permanent harm can result from caution. Irreparable injury may come from any other course.

Boston—E. T. Hartman, Sec. Mass. Civic League:

If the matter can be stopped now the harm done may in time be remedied. If it goes farther I feel that it never can be undone.

Philadelphia—Fairmount Park Art Association:

The proposed extension threatens to impair seriously the beauty and impressiveness of this wonder of the world, and it is impossible to speak too strongly of the harm that will be done by allowing the desecration to continue. The question is one on which the nation, yes, the world, feels deeply. Stop the present onslaught of commercial greed upon the spectacle which it is our plain duty to preserve for the delight and inspiration of unborn and unnumbered generations.

New York—Florence N. Levy, Editor *American Art Journal*:

When an American admires an European landscape he is at once met with the remark, "But you have Niagara." Unless great care is taken we will no longer be proud of this wonderful natural beauty.

New York—John DeWitt Warner, Attorney:

I urge as peculiarly in my personal knowledge that the scheme for the admission of electrical horsepower from the Canadian side involves the ruin of the falls. That it is seriously urged upon a government that professes to sympathize with its citizens in their wish to preserve this natural beauty and wonder is a grotesque insult to its intelligence and good faith—as much as would be the proposition that one who had carefully plugged a bung-hole in one end of a barrel should stave in the other end.

Boston—C. Preston Ames:

The United States will be the object of scorn of the civilized world, and deservedly so, if we allow Niagara Falls to be diminished in grandeur.

Binghampton, N. Y.—Emma E. Dickinson:

I live in Yokohama, Japan, where water-falls are revered and where beauty of landscape is far more important in the eyes of the people than money-making. May we not learn a valuable lesson from this beauty-loving people, and save our glorious falls from the hand of the despoilers?

Hinsdale, Ill.—Georgiana Barrens:

I am an American missionary living in Japan; and, on my return to this country after nine years' absence, am shocked to find that the practical and utilitarian element in my native land has gained such ascendancy as seriously to endanger the great pride and glory of our natural scenery, Niagara Falls. After witnessing for many years the intense love and admiration of the Japanese for even the slightest fall of water, the contrast is by no means flattering to our own people; and I beg of you to use your influence to maintain at least as high a standard as that accepted in a heathen land.

Turners Falls, Mass.—Julius B. Robinson:

A people who could convert that cataract into a mill-dam would sell the American flag to soap-makers and meat-packers for use on posters and labels. I hope the Secretary of War will defend this capital of nature's empire from sack by these invaders.

Urbana-Champaign, Ill.—E. J. James, Pres. University of Illinois:

Some things are of more importance than cheap power, and one of them is the preservation of such great natural objects of interest as Niagara Falls. To permit the falls to be disfigured or demolished in any respect as an object of natural interest would, it seems to me, be illy paid for by the increment of power which would be secured by the use of these falls for the production of electricity. As long as there is any possibility that a few people by diverting the water there, or by combination with people who have secured franchises, can make fortunes there will be no safety and no hope of saving the falls in the long run. A franchise once given, as we know from the history of such franchises, is a franchise given for ever. The only safe thing is to prohibit such franchises absolutely. It is difficult, of course, to find out what the Americans wish in a matter like this. But I am confident that succeeding generations will curse the memory of ours if we allow this magnificent object of natural interest to be destroyed.

Dubuque, Iowa—Mrs. H. C. Treadway:

America necessarily lacks the many points of historical interest belonging to older nations, but generous nature has endowed our land plenteously with gifts no less rich, and more beautiful than any work of man's. Shall it be said, to our shame as American citizens, that we have failed duly to cherish these great gifts, or unprotestingly permitted their wanton destruction?

Washington, D. C.—Alfred Gaskill:

The United States is building its house. Those who are to live in it demand that every attainable treasure shall contribute to its adornment.

Niagara Falls cannot be spared.



Pittsburg—H. J. Heinz:

No one is more interested in the commercial and industrial growth of this country than I am, but there are some things of higher importance than cheap power, and one of these is the preservation for our children and children's children of the beauty and grandeur of historic Niagara Falls.

Boston—Robert Treat Paine:

Let me add my most earnest appeal to you to do everything in your power to save the full glory of Niagara Falls for all future time! The falls at Niagara are one of the beauties of the whole world, and ought to be kept for ever.

Boston—Chas. F. Dole, Pres. Twentieth Century Club.

I am only one of a great number of people who look confidently to your well-known large-mindedness and public spirit to see to it that "the Commonwealth suffers no harm" in the loss of that splendid gift of nature to the American people—the Falls at Niagara.

Milwaukee—Hon. Sherburn P. Becker, Mayor:

I believe it would be to the everlasting discredit of the American people to permit the grandeur of the falls to be at all diminished for commercial purposes.

Morgan Park, Ill.—Henry J. Bohn:

The contention that the power can be taken and at the same time the beauty of Niagara Falls retained in all its original grandeur and glory is absolutely without common sense.

New York—J. W. Howard, Consulting Engineer:

Kindly note that the request for 160,000 additional horsepower-water is tentatively recommended by one of our engineer officers of the army, who states that "the withdrawal of this water *may* not interfere with the preservation of Niagara Falls." He should state definitely whether it *will* or *will not* interfere, and upon what data, by actual measurements, levels and volumes, he places his decision. Even as a commercial benefit, Niagara Falls earns more money to the State of New York and our country, drawing thousands there as sightseers, than it would earn to a few stockholders in a new electric power plant. I call your attention to the fact that the new power plant will be on the Canadian side, where there is absolutely no market now, nor for a generation, for the power; also that the power will have to be brought by wire and sold to prospective users (not yet found) in the United States at or near Buffalo. This power is not needed there, and, even if delivered, is not sold at a price less than power can be produced from coal. The general development of the industries of our country are best if distributed throughout different states without an abnormal congestion at or near Buffalo or any one point.

# Niagara Falls and River Subject to Federal Control

OPINION BY EX-ATTORNEY-GENERAL JOHN W. GRIGGS, BEFORE  
THE HOUSE COMMITTEE ON RIVERS AND HARBORS.

Upon the principle which has committed to Congress the right to regulate interstate commerce the United States may, through its executive officers and its courts, if Congress vests in them authority and jurisdiction, control the navigable streams of the United States, and that without regard to who may own the bed of the stream. \* \* \*

The extent to which the United States, through Congress, has heretofore exercised this jurisdiction to regulate navigable streams is not the fullest extent to which that power may be extended. I think some confusion has arisen in the minds of counsel who have addressed the committee on behalf of the power companies with reference to this particular subject, because of the language and framing of the statute under which suits heretofore have been maintained or action heretofore has been taken by the Secretary of War to prevent structures and diversions that would interfere with the navigability of the stream. The river and harbor act of 1890, I think it is, authorized the Attorney-General of the United States to bring a suit in equity to enjoin any structure in or upon a stream which would interfere with the navigability of the stream, and it was under that statute that the suit of the United States *v.* Rio Grande Dam and Navigation Company was prosecuted. The State itself there limited the right to sue to the ability of the United States to prove an actual or threatened impairment of navigability. But the courts have never held that Congress was without power to decide itself absolutely what structures should be permitted and what structures could not be permitted, upon the ground that in the judgment of Congress, without the right of appeal to the courts, it was to the interest of the United States to preserve navigation and prevent those particular things; and

so I think that when Congress, exercising its right to control the navigable streams of the United States, says as to a particular river—and we will instance here the Niagara River—that no water of the river shall be diverted at the Falls by any public corporation, even though it is put in below, that that would be a legitimate and constitutional exercise of the power of Congress over this subject.

Of course, a purely intraterritorial river is subject to the jurisdiction of Congress only because of its navigability, and if, as a matter of fact, it is not navigable, Congress has no jurisdiction over it. But it does not rest with the courts to determine what things Congress, in its wisdom, may say may not be done to affect the navigability; what the purpose and plans of Congress may be, or of the executive department carrying out the laws and will of Congress, it is not for the courts to say; and if Congress, exerting this power to control navigable streams and prevent interference with and diversion of water, sees fit to say that this or that kind of diversion shall not take place, I take it that their declaration on that subject is absolute proof that that kind of a diversion would be an injury to navigation and that that kind of diversion ought to be prevented in the interests of navigation. At any rate, if the object were one of great public benefit, if the purpose to be obtained were a very meritorious one, Congress, in my opinion, would be justified in asserting the power, in putting the power into a statute in time to preserve the rights of the Government before they are lost by delay by acquiescence or laches, which might make it very difficult or very unjust to assert the extreme right. I say Congress would be justified in asserting the very extreme claim of right in a statute and leaving it to anybody that thought he was aggrieved to resort to the courts to have his rights defended and preserved, if they had been impaired. But the right over this particular river, the right of Congress to control the diversion of waters of the Niagara Falls, need not rest in the slightest degree upon the navigability of the stream. If it were a trout brook up which even a skiff could not go,



the Congress of the United States has absolute power to control it, and that is upon the ground that it is a frontier river, a boundary river between this nation and another.

It is conceded public law, no one will question, that without any grant in the Constitution of the nation it has an inherent power—a power of every nation—to protect itself at the frontier against what lies beyond. And therefore from time immemorial nations whose boundaries consisted of rivers, whether navigable or not, have exercised both independent and joint control over those rivers, sometimes by independent action relating only to their own side, sometimes by stipulation and treaty governing by mutual agreement the use of the whole stream on both sides.

Now, the reason for this is perfectly apparent. It arises for one reason out of the right of self-defense. The nation has a right to say what may be done or what may not be done at its frontier on a boundary river in the interest of national protection and defense, and the States and the citizens hold whatever they hold subordinate and subject to that paramount right, and it is not necessary that the nation shall wait until it is in the conflict of war to assert those rights; it has a right to assert them for the purposes of peace. The United States has absolute power to say at what points on its frontier either merchandise or individual persons may enter its territory and how they may enter; it has absolute control over international commerce; it has a right to establish a line of pickets along the frontier, whether it be on land or water, and forbid any person, or such persons as it sees fit to designate, from crossing the river into our territory, or from going from our territory into the opposite territory.

I think if you gentlemen will consider for a moment what must be the powers of a nation with reference to its frontier you will find no difficulty whatever in this subject, and therefore in its constitutional jurisdiction you are seeking, for you have it on these two explicit grounds—on the last one as fully as it could possibly be desired.

Further, this [Burton] bill deals with the subject of

transmitting power from the Canadian side to this side. Can there be any question of the right of Congress to control that? If they can prevent the Canadian fisherman from bringing his catch across Niagara River or across the river at Thousand Islands into the United States and selling the fish, can not they prevent the power company from running its wire across the river and transmitting its power? It has been decided by the Department of Justice in an opinion which seems to have been accepted on all hands as expressing the law of the case that no person has a right to make an actual material connection of the soil and territory of the United States with a foreign territory without the consent of this nation, even though Congress has never acted upon that subject.

You will find the opinion I refer to in the opinions of the Attorneys-General about the beginning of 1898. The opinion was written by the Solicitor-General, Mr. Richards, now judge of the United States circuit court for Ohio, and it is a very able opinion, and the reasoning of it is absolutely sound, and it has been the practice for more than a quarter of a century to require any company desiring to lay a cable on the shores of the United States to connect it with a foreign country to obtain the consent of the Government, and when an attempt was made by the French cable company to land a cable on Long Island without that consent a suit was begun in behalf of the Government without any statute to authorize it, merely asserting its sovereign jurisdiction, and although that suit was never decided, the principle of it was practically acceded to by the cable company in complying with the demands of the Government and securing consent upon the terms that the Government demanded.

Now, if they cannot land a cable to transmit intelligence, cannot Congress forbid their landing a cable to transmit electrical energy?

Reference has been made, I notice, in one of the arguments that I have had the briefest opportunity to look at, to the case of the United States *v.* The Rio Grande Dam

and Irrigation Company, decided in 174 United States. As I have said before, that case was decided under the act of 1890 and 1891, which gave the Attorney-General the right to bring an injunction suit to restrain any interference with navigation. It was also based upon another ground, namely, that the Rio Grande River along the boundary of Texas was a boundary stream, and that the United States was bound to protect it against the depletion of its waters under the obligations of comity with a neighboring country. But the court did not find it necessary to decide the case on that ground at all; but I want to read what they say about it.

Referring to that subject, it says that such questions might, under some circumstances, be existing and important; but here the Rio Grande, as far as it is a navigable stream, lies as much within the territory of the United States as in that of Mexico, it being where navigable the boundary between the two nations, and the middle channel being the dividing line.

Now, the obligations of the United States to preserve for their own citizens the navigability of its navigable waters is certainly as great as any reason of treaty or international law to their citizens, and if the proposed dam and appropriation of the waters of the Rio Grande constitute a breach of treaty obligations or of international duty to Mexico, they ought to constitute an equal injury and wrong to the people of the United States. We may therefore properly limit our inquiry to the effect of the proposed dam and appropriation of waters upon the navigability of the Rio Grande.

They found sufficient jurisdiction in that case to sustain the bill.

Mr. BEDE. I have found Mr. Grigg's argument very convincing to me, but I would like to ask him this question: The titles of the bills introduced are for the preservation of Niagara Falls—

Mr. GRIGGS. That is all of it?

Mr. BEDE. And for other purposes. That goes in all the bills. The point with me is that Niagara Falls itself is an obstruction of commerce. What do you think of a bill the purpose of which is preserve the obstruction to commerce?

Mr. GRIGGS. It may be that it is an obstruction to com-



merce at present, but it does not follow that it will always be. We do not know what the future may hold with reference to the desirability of the United States continuing to hold that and utilizing it for the benefit of commerce. Commerce does not include only navigability. \* \* \* \*

Mr. GRIGGS. I suppose they can regulate the rates that people would get for carrying on the Niagara River as one regulation. Is that what you mean?

Mr. DAVIDSON. Not quite. Could they use the water of the river, or the condition in which the river is, for any scheme by which commerce might be benefited?

Mr. GRIGGS. Could the United States?

Mr. DAVIDSON. Could the United States, outside of the use of it to float a ship?

Mr. GRIGGS. Absolutely; they can make a canal of it, subject to the rights of Canada; they can use the power, divert it there, and build a canal like the Welland Canal, for instance. There is no question about that, I think. Your chairman will tell you that he would believe that.

Mr. DAVIDSON. Well, would it go any further than that, if it can be imagined that any other use of the condition there in the interest of commerce and outside of the small matter of transporting, making a passage for a boat?

The CHAIRMAN. An extreme question would be this: Suppose there were a lateral canal there in which there were locks, for the operation of which power was required. Could the power derived from Niagara Falls be used to operate that?

Mr. GRIGGS. By the United States?

The CHAIRMAN. Yes.

Mr. GRIGGS. I have not the slightest doubt of it. They could use the power just as well as they could use the water that flows over by the current to carry the ship down.

Mr. DAVIDSON. That is the idea I wanted to get at, that they could use the river and its conditions, creating power or anything else that would be to the advantage of commerce.

Mr. GRIGGS. Absolutely.

Mr. SPARKMAN. Assuming it is practical to canalize that river, beginning above and going below the falls, and considering further that it would be advisable at some time to do that, would the Government then have to condemn the property of these companies, the companies that are using the water for the purpose of creating power, electric power?

Mr. GRIGGS. I would not want to answer that question positively. It would be a very interesting and difficult question, and the longer Congress remains silent on the subject the more difficult the question will be and the more unjust it will be to interfere with these people. The sooner Congress acts the less they will have to pay, if anything. I do not say they will have to pay anything.

Mr. SPARKMAN. I understand you contend, however, that Congress has power to deal with the river and falls independent of the question of navigability?

Mr. GRIGGS. Yes, sir.

Mr. SPARKMAN. Do you think that Congress, either for one purpose or the other, would have exclusive power to say just what could or could not be done there?

Mr. GRIGGS. I think they would have the exclusive power.

Mr. BURGESS. Here is the situation that confronts us: Whatever the powers of Congress are they have not been exercised. The powers of a State for other purposes have been exercised, and investments have been made under charters authoritatively granted by the State. Would the courts permit Congress to destroy those investments by the exercise of any power, conceding it had the right? That is the same question asked you by your neighbor there, just in another form.

Mr. GRIGGS. I do not wish to give a positive opinion on that, but I say this: If there had been a law of Congress forbidding it of course they could recover no compensation, and the sooner you pass a law of that kind the less of this kind of compensation you will be liable for. I would say this as to the equity of it: That without regard

to the right of a person, when Congress has been silent, stood by and seen people in good faith invest their money—they ought to be sure it is a real investment, and not watered stock—they ought not to let those people lose their money. I do not think it would be right for Congress to sit still and let people make bona fide investments on the strength of that silence, and then boost them out without paying them for it. And that necessitates Congress saying something very quickly on the subject.

Mr. BURGESS. I thought maybe you had looked into that particularly.

Mr. GRIGGS. No; I have not.

The CHAIRMAN. One question a little in the line of what Mr. Bede asks: To what extent can the court in passing upon the bill consider the real motive in passing the bill? This bill has in its title this, "for the control and regulation of the waters of Niagara River, for the preservation of Niagara Falls, and for other purposes." As it seems to me, there is a question of navigation there which assumes very considerable importance. But suppose in attacking the validity of the measure some person should say the real object of that bill was the preservation of Niagara Falls, how far would you say the courts could take up that question and consider the actual motive?

Mr. GRIGGS. I would say this: That the judicial department will never question or inquire into the motives of Congress in passing an act upon a subject over which they have jurisdiction. That was demonstrated by the frequent decisions of the Supreme Court in the tariff acts, where they have been assaulted upon the ground that they were not intended to produce revenue, but were intended to protect manufacturers. The courts have always refused to listen to that plea. The same suggestion of improper motive was raised in the Oleomargarine cases. The court will only inquire whether there was constitutional authority for doing that particular thing, and what the motive of Congress was they will not permit to be questioned.

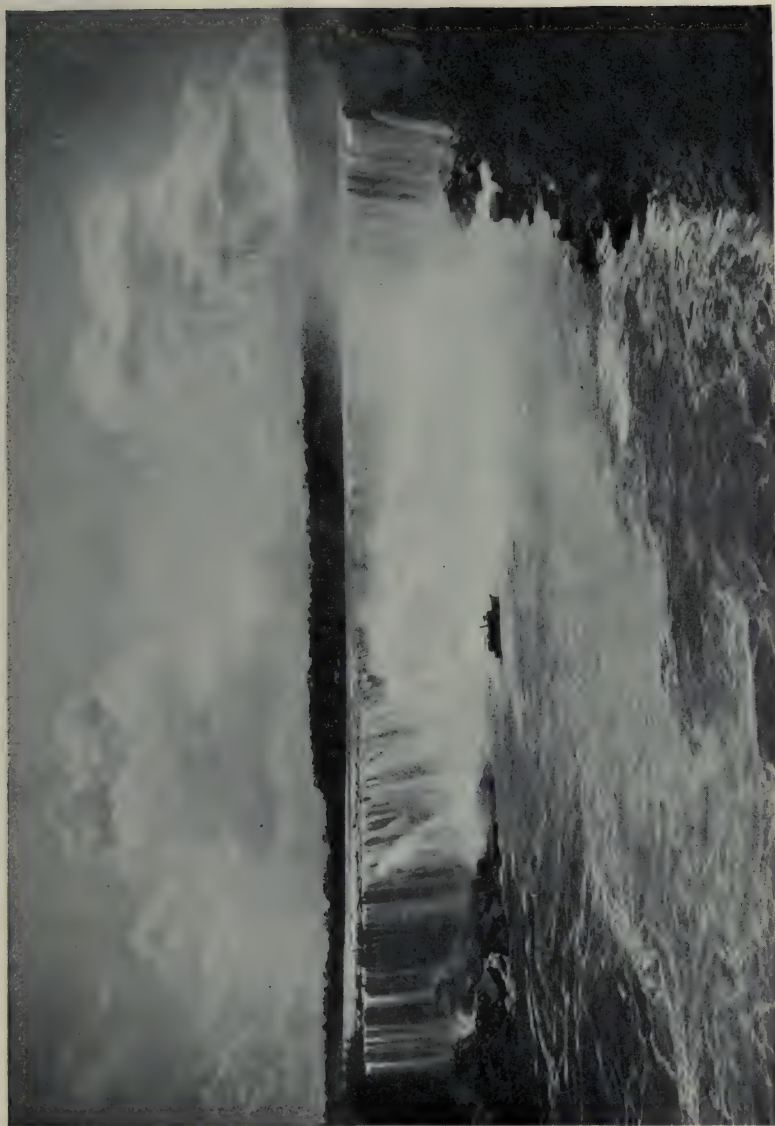




The American Fall in Winter Time



The American Fall from the Canadian Side



The Canadian Fall from the Canadian Side

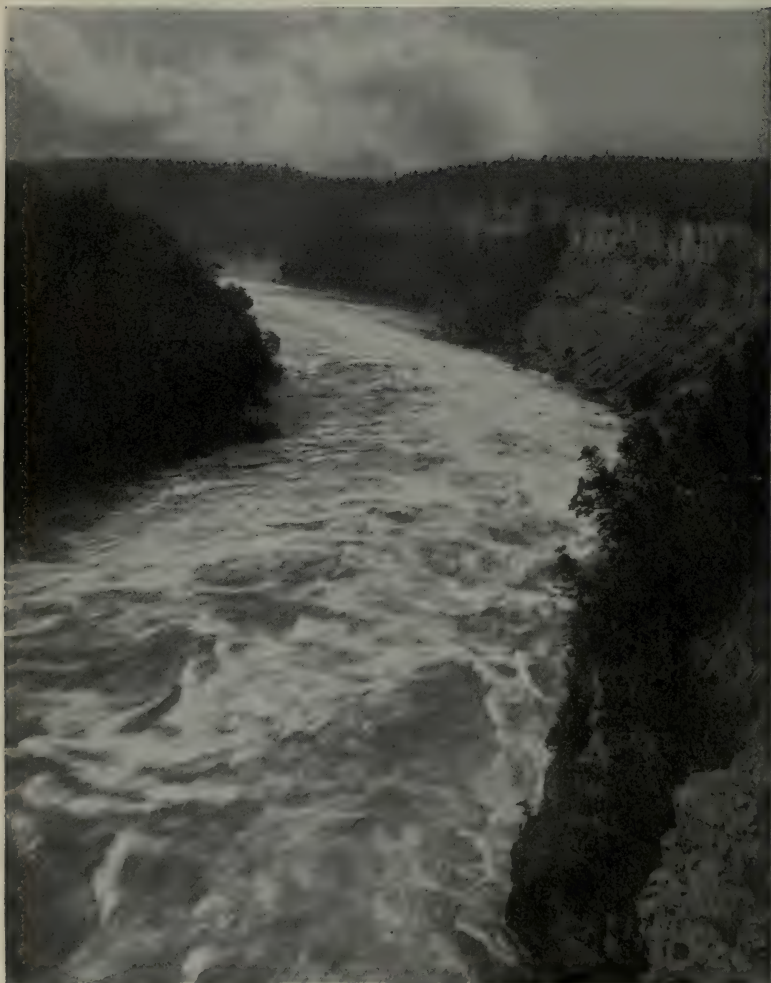




The Whirlpool, Niagara River



The Whirlpool Rapids in Niagara River  
From which it is proposed to take twenty per cent. of the flow for a New Power Scheme.



The Gorge and Rapids of Niagara River





The Cave of the Winds in Winter



The American Fall as Seen from the Rocks beneath

Mr. ALEXANDER. Do you regard navigability of a stream as a question of fact?

Mr. GRIGGS. It is a question of fact under the statutes as they stand now, because the laws apply only to those which are navigable, and there is necessarily a question of fact in any suit instituted.

Mr. ALEXANDER. If it is a question of fact, General, would the courts have a right to review the question?

Mr. GRIGGS. Well, I would confine that answer to the Niagara River. There is no question but what that is a navigable river. The fact that it is not navigable for boats over the falls and immediately below the falls would not affect the question whatever, because it is a navigable river above and below, and the court would never inquire whether Congress had abandoned forever the right to make it navigable between those two points.

Mr. ALEXANDER. I was seeking your opinion, General Griggs. If navigability is a question of fact, would the court have a right to pass upon the question regardless of the Niagara River?

Mr. GRIGGS. I will answer your question that I think the courts would have a right to decide that a river which Congress had declared to be navigable was not navigable if the facts proved it, sir.

Mr. ALEXANDER. In your letter of January 31, 1906 (and I ask this question by request), you say, "For the purposes of ordinary domestic jurisdiction the river on this side of the center line thereof is under the jurisdiction of the State of New York." I simply ask if that is still your opinion?

Mr. GRIGGS. That is my opinion; yes. I mean by that that crimes committed on the river to the central line are within the State of New York and subject to be tried and determined there, and it is in that sense within the jurisdiction of New York, subject to the paramount jurisdiction of the United States for regulating navigation and for regulating the international boundary.

Mr. DAVIDSON. On that other question of navigability



of the river would the court inquire into the fact as to whether a particular portion of the river was navigable in fact, if it was recognized that other portions of the river were navigable in fact?

Mr. GRIGGS. I do not think they would, if they held in a case that the fact that the river is not navigable at certain points does not make it a nonnavigable river.

The CHAIRMAN. That is, the river must be taken as an entirety?

Mr. GRIGGS. Yes; as an entirety.

Mr. HUMPHREY. Do you remember that case?

Mr. GRIGGS. No.

Mr. GRIGGS (continuing). It was in the Federal courts, the courts have also decided this: That Congress for improving navigation may utterly destroy and abandon a channel of a river in one place and run the channel somewhere else, and are under no obligations to pay damages to those that border on the old channel.

Mr. SPARKMAN. You say that, taking everything into consideration, Congress has the exclusive control over such a stream as Niagara River and the falls not only for the purposes of navigation, but for other purposes, which you explained a moment ago. Excluding those other purposes, would you think it had exclusive power to deal with the question of navigability?

Mr. GRIGGS. I think it has.

Mr. SPARKMAN. Assuming it has navigability?

Mr. GRIGGS. Yes; that is to say, subject to the rights of Canada, of course.

Mr. SPARKMAN. You have just stated that you thought the court would have a right to say a stream was not navigable, although Congress might declare it to be.

Mr. GRIGGS. I think so.

Mr. SPARKMAN. But assuming that a stream is navigable in point of fact?

Mr. GRIGGS. Then their power is absolute.

# Has the United States Government Paramount Jurisdiction Over Ni- agara Falls and River?

## Dissenting Opinions Given by Counsel for Power Companies

FRANKLIN D. LOCKE, COUNSEL ONTARIO POWER COMPANY.

I think it is clearly established that the Niagara River between the points where water is taken from it and the point at which the water is restored is not navigable, and never has been navigable, and that the Federal jurisdiction extends over that property only to this point; that it may, under its general authority, enter upon that stream and make a navigable channel from the waters above to the water below the falls. It is clearly proven here that no diversion of water which has yet taken place has in anywise interfered with the navigability of Niagara River, and I maintain—and I understand that the committee consists of fifteen lawyers and two gentlemen—I maintain before you lawyers, the Federal jurisdiction rests upon that fact.

J. H. HANSON, ESQ., COUNSEL, NIAGARA COUNTY IRRIGATION  
AND WATER SUPPLY COMPANY.

The CHAIRMAN. Suppose Congress should in its wisdom or unwisdom decide that all the water in a navigable stream ought to remain in order that the greatest possible depth might be obtained; and instead of dredging the channel deeper, that Congress should decide to conserve all the waters flowing into a stream; is it not within the power of Congress—

Mr. HANSON (interrupting). I do not think so.

The CHAIRMAN. In other words, your contention is that Congress has merely a sort of prima facie right to control navigable streams, and that the real question is

one of fact to be determined by the courts, and the courts may review the action of Congress?

Mr. HANSON. That is not quite my contention. My contention is that every owner along the banks of a navigable stream has a vested property right to the use of the waters of that stream, subject to the paramount right of the Government to control those waters in the interest of navigation alone; that each right must be enjoyed with due regard to the rights of others; that the Government can not arbitrarily say to the riparian owner, "You may not take any water from this stream," but that the riparian owner may not take so much that the navigable capacity of the stream is ruined or destroyed.

The CHAIRMAN. In maintaining the navigability of a stream, does not Congress have the right to maintain its natural condition and prevent diversion?

Mr. HANSON. I do not think so; not initially, not arbitrarily. I think the riparian owner has the right to use the water to the extent that it does not interfere with the navigation of the stream.

JOHN L. ROMER, ESQ., COUNSEL FOR THE NIAGARA FALLS  
HYDRAULIC POWER AND MANUFACTURING COMPANY.

We are not pirates, we are not robbers, we are not engaged in poaching upon the Government domain, but we are doing what we have a right to do, and that right is a property right and the welfare of families, and I might say almost a community is dependent on it, and we do not want it interfered with by Congress, and while Congress in its capacity as sovereign has the right to regulate commerce and so to deal with navigable waters in that way, so far as the interests of commerce may require, I do not think that Congress ought to delegate that right to any one officer of the Government, no matter how wise and good he may be. I think that is a power that should be entertained by Congress to be exercised by its own wisdom, and not delegated to an official.

I do not think Congress has any power or jurisdiction to interfere with the use of those waters at a point in the



stream where it does not inure or pertain to the benefits of commerce or navigation. Your power is limited by the Constitution, as I read it, to just that point.

Here we speak of the beauty and grandeur of the Falls. That is a subject that does not pertain to Congress, and Congress has nothing to do with it. The State of New York might exercise that privilege if Congress could.

The CHAIRMAN. Then you deny absolutely that Congress has anything to say about it?

Mr. ROMER. It has not for that purpose, no sir; that is my judgment.

## The Paramount Rights of the Federal Government in Controlling a Boundary Stream

OPINION RENDERED BY FRANK W. STEVENS\* BEFORE THE COMMITTEE ON RIVERS AND HARBORS.

The immediate occasion for my addressing you arises from what I have discovered in your printed proceedings, and I beg to take your time for a moment while I read one or two expressions. In the communication from the Secretary of War to the President, which is printed in your proceedings, the letter being dated the 20th of March, I find this language:

The recommendations of the Commission of legislation necessary and desirable to prevent the further depletion of waters flowing over the Niagara Falls suggests the question whether such legislation is within the limitations of the legislative power of Congress, when applied to nonnavigable parts of a stream which is within the borders of a State and which is only partly navigable, if the use of the water to be inhibited does not affect navigation in the navigable part of the stream below.

I also find in the communication from the Attorney-General to the Merchants' Association of New York, on

\*Mr. Stevens was recently appointed Chairman of the Public Utilities Commission outside Greater New York, by Governor Hughes.

page 6 of Senate Report No. 1611, the following language:

In other words, I have not attempted to do more than indicate that without denial of the initial rights and functions of the State there is a great unsettled question here of the nature and scope of the Federal power.

So that we have two of three officers of the Government expressing, after some consideration of the case, some degree of uncertainty as to the scope of the powers of Congress in this matter. In addition to this, I find by consulting your printed record that four gentlemen of high professional standing and personal character at the bar have deliberately placed themselves on record before you on this question, in the language prepared by Mr. Hanson, who says:

Our position is that it is not within the power of Congress to exercise any control of the navigable waters of the United States excepting for the purpose of controlling navigation in the interest of interstate and foreign commerce.

Mr. HUMPHREY. Which four gentlemen do you refer to?

Mr. STEVENS. Franklin D. Locke, who represented the Ontario Power Company, and who is a gentleman of the highest standing at the Buffalo bar; Mr. Hanson, who is the attorney for the Niagara County Irrigation and Water Supply Company, which is the same thing as the General Electric Company; Mr. Whitridge, representing the Niagara Falls Power Company, and Paul D. Cravath, who represented the Niagara, Lockport and Ontario Power Company. All of these gentlemen briefly expressed themselves on this proposition that the sole power in relation to the river Niagara is derived from the power of the General Government over navigable streams in relation to commerce. They also deny that you have any power in case the water is taken from a nonnavigable part of the stream and restored before the navigable part is reached, upon the proposition, I suppose, that such diversion and return of the waters can not by any possibility affect the navigability of the stream and that Congress has no other jurisdiction except over the navigability of the stream.

This expression of doubt on the part of the Attorney-

General and of the Secretary of War, and the emphatic declarations of the four gentlemen I have named, have led some of the friends of the preservation of Niagara Falls to request me to address you very briefly on the question of whether there is any power in the General Government outside of the question of its being a navigable stream, outside of the powers conferred by the Constitution and the decisions of the courts over such streams.

I suppose there are only properly two ways of addressing you on that question. The first is to briefly and concisely state the proposition, and leave you to work out the illustrations and various ramifications into which the general doctrine would go; and, second, to make an elaborate legal argument, full of citations of authorities and the like. The second I should hope you would not tolerate at this stage of the discussion, and it will content me fully to express as briefly and concisely as it may be possible for me those considerations which seem to me decisive, and upon which I venture to say that this question ought to be one of first impression, that the General Government has full and absolute power over the waters of a navigable river.

If it has any powers over that river other than the navigability proposition, which I waive entirely at this moment, I suppose that it must be either because it has rights in the stream which it is bound to protect, or that it owes duties and obligations in the stream which it is the duty of the General Government to enforce. In either case, I apprehend that Congress would have full and absolute authority to protect the right or to enforce the obligation. So that the inquiry to which I ask you to direct your minds is, first, whether the General Government, whether the United States, has any rights in a navigable river, outside of the question of its navigability. Assume, if you choose, that the stream from Fort Erie to Fort Niagara were in the condition of the Whirlpool Rapids, absolutely non-navigable. What would be the rights of the General Government in that case? We have to consider that it is a



natural boundary of the country; that as such it affords a most important means of defense. If the Niagara River were abolished—wiped off of the map—and nothing but a level prairie occupied its place, unquestionably the defenses of the United States upon that frontier would be seriously impaired. I take it that the fortification of the city of Buffalo, in the case of any difficulty with Great Britain, would require serious attention at the hands of Congress. It now requires no attention at all by reason of the natural defense afforded by Niagara River.

This question is not new in the history of the diplomacy of the United States. You will find by referring to the proceedings of the Commissioners negotiating the treaty of Ghent, that one of the demands made, or rather a part of the instructions issued by the British foreign office to its commissioners, was that a part of the eastern shore of the Niagara River should be conceded to Great Britain. You will also find that as a part of the history of the case, leading up to those negotiations, it was a demand on the part of Canada that the entire eastern shore of the Niagara River should be ceded to Canada. The British foreign office did not go as far as that, but that is simply to illustrate that the Niagara frontier has always, in the course of our relations with Great Britain, been an important part of our national defense. Now, I need not pursue that idea any further, because what follows from it is so plain a deduction that further argument on my part you will have anticipated already.

Suppose that Great Britain should attempt (and it is entirely practicable from an engineering point of view to do so) to divert the waters of the Niagara River from the channel, and leave but a dry bed there. Suppose that it should start the digging of the channel at Fort Colburn, following the line of the Welland Canal, would it not be a subject of diplomatic intervention on the part of the United States? I insist that the General Government as a part of its functions as a government has the absolute right to protect its boundaries wherever they may be and whatever



The Canadian Fall in Winter



The Canadian Fall from Goat Island



they may be, and if it possesses a natural boundary of great value like the Niagara River, it can protect it against depletion or diversion not only by the adjoining power, but from depletion and diversion at the hands of its own citizens.

It may be said that it is farfetched to suppose that the Niagara River will ever be absolutely diverted. Granted, *arguendo*; it is a question of right; whether the time has come to exercise the right, whether there are any dangers, either present or in the immediate future; it is simply a question of fact and does not touch the right of the General Government to protect that river from depletion and diversion whenever, in the judgment of Congress, it is time to do so.

There is in the same connection another proposition which I have not seen adverted to in any of the discussions before your body, but which probably touches or infringes to some extent upon the navigability proposition, and that is this: You have undoubted jurisdiction over the Great Lakes within the boundaries of the United States, and anything which may in any degree tend to impair the navigability of those lakes or interfere with the harbors upon those lakes is certainly within the jurisdiction of Congress.

Now, the Niagara River is the outlet of Lake Erie, and by any interference with Niagara River, either by building a dam or deepening the channel, it is theoretically possible that the navigability of Lake Erie may be interfered with to some extent, either by damming the lake or lowering its level. A lowering of the bed of Niagara River would unquestionably, other things remaining the same, lower the level of the waters of Lake Erie, and so it seems to me that you would have full power and authority, so far as you could within the boundaries of the United States, to prevent anything which would lower the waters of Lake Erie, and I insist that it is entirely possible that the proposition now pending before you may affect the waters of Lake Erie and their level. I am not going to indulge in any engineering cases, but use the language of Mr. Ran-

dolph when he was before you regarding the Chicago Drainage Canal.

I notice that he there stated that there had been great speculation as to the effect upon the level of Lake Michigan and Lake Huron by the diversion of the waters into the Chicago Drainage Canal, and he stated that the maximum effect of the diversion by the canal with its capacity was that it would or might lower the mean level through a series of years one foot. I think that that was based upon an estimate of 9,000 cubic feet per second. It is not material whether I am right in that or not; it is a small quantity. Yet the Niagara County Irrigation and Water Supply Company, which is the corporate form under which the General Electric Company wishes to use the waters of this river, is proposing to take from the Niagara River several miles above the Falls, through a canal which they say will divert double that amount; and if they have any rights under their charter from the State of New York, they can divert any amount they choose.

They say that to take from the Niagara River will increase its capacity. Any taking of water from the river where they propose to take it will unquestionably hasten the flow, in my judgment, above from Lake Erie, leaving the same exit which is now afforded by the river passing the Falls and the works of this company; and they claim the right—and if there is any right under the charter from New York, they can do it—to construct a canal of any size they see fit, limited only by the commercial possibilities of the case, and what those possibilities are no man can guess. These questions have arisen within the last twenty years. All the questions relating to a natural water boundary of the country are entirely new, because until within a few years such a thing has not been possible.

It is now possible, as is shown by what is going on at the Niagara River and at the Chicago Drainage Canal, and where that possibility stops I do not know, and I apprehend that no living person can with any confidence predict. So that I say that you have the right to control the

waters of the Niagara River upon the ground that it is an outlet of Lake Erie and that any interference with the waters of that river may interfere with the level of the waters of Lake Erie; and you are the judges of that question, and not the courts, as has been argued here, upon the navigability proposition; and I apprehend that any serious lowering of the level of Lake Erie would be something that would not be tolerated by Congress or this committee for an instant.

So far as to the rights concerned. We turn now to another proposition, as to whether the United States owes any duty regarding this river, whether it is under any international obligation, any obligation to the Government of Great Britain, to prevent diversion of the waters of the stream. We may separate that question entirely from the question of fact as to what has been doing upon the Canadian side. We may, for the purpose of the legal argument, I think, stand squarely upon the proposition that Great Britain objects to any diversion of the waters of that river, and, so objecting, it could be made a matter of diplomatic protest, and how much further it might be carried it is not necessary for me to say, that the Government of the United States should permit that diversion of that river. It is physically possible for either Government to divert that river entirely from its present course and turn the waters of Lake Erie into Lake Ontario either east or west of the present course of the stream.

Now, suppose that attempt were made. Serious international complications would arise if it was made by the Government of either of the adjoining powers. Suppose that attempt is made by the individual citizens of either government, what kind of a question have you there? Is it not a part of the duty of this nation, if protest were made, to prevent the people, the citizens, or any person, whatever their jurisdiction, diverting waters? And is it not equally the duty of Great Britain to interpose the same objections upon its own side of the stream? There are other international complications which might arise. If, as claimed,



the riparian proprietors have a right to the use of the waters of the stream as they flow along, the same as any ordinary stream flowing through private lands—if the people upon the Canadian shore have the right to divert the waters for power and then return them to the stream, they have the right to have the current flow in its usual customary manner in regard to the ordinary usage in regard to ordinary streams.

That is the proposition upon which all this power must rest. And yet the proposition is made seriously here to divert from the Canadian side waters to the American side of the stream, to enhance the flow and deepen the channel at the head of Niagara Falls, and they say that it will increase the flow of the stream a large percentage. Now, if you have the right to select that proposition, you have the right to the American Falls. That is the proposition of this company, to deepen the channel sufficiently to take the whole body of the stream there. If you have the right to divert, to make the channel 200 feet wide and 30 feet deep, as the General Electric Company proposes to do, you have the right to permit a channel there which will divert the entire stream, if it is physically possible, and of course it would be by digging your trench deep enough and wide enough, and at once we would have a serious international complication on the ground of interfering with the rights of individuals, and sacrificing them to the right to the use of the stream.

There is no power in this country, I apprehend, which would regulate that upon the American side, except the General Government. The State of New York has no jurisdiction; Great Britain has no recourse to the State of New York upon that question.

So that you may take three propositions—first, the protection of the natural boundary, which affords a natural defense against foreign aggression; second, the preserving of the level of the waters of the Great Lakes, and third, the avoidance of international complications by unduly diverting the waters of the stream; and any one, or all, of

those propositions is sufficient to warrant jurisdiction of the Congress in the case of the Niagara River.

Now, if it be said that none of these touch the preservation of the scenery of Niagara Falls, I grant that. But if you have jurisdiction to prevent the diversion of the waters of that stream at all, there is no power which can inquire into the motive for the exercise of that jurisdiction. The courts will never do that. That has been expressly adjudicated by the United States Supreme Court, so far as an adjudication can be made, in a variety of cases, and I only need call your attention to the case in which that court held that it was lawful to impose a tax of ten per cent. on the currency issued by the State banks. The argument was then made in that case that it was not a tax; that it was an ulterior purpose; that it was simply to wipe out something, instead of affording a revenue. The whole thing was disposed of in the opinion of Chief Justice Chase, who stated that the courts would never inquire into the reason of the exercise of the power; that it was entirely within the cognizance of Congress as to whether it would exercise that power.

## No Recompense by American Users

JOHN L. ROMER, COUNSEL FOR THE NIAGARA FALLS HYDRAULIC POWER AND MANUFACTURING CO.

The CHAIRMAN. There is no tax imposed, as I understand it; no payment which must be made into the treasury of the State or county for this use of power?

Mr. ROMER. No, sir; except as it constitutes property which the assessors, as shown in this case here, are entitled to consider; and our assessments have been growing wonderfully for the last ten years up there.

Mr. ELLISS. Do they tax the franchise, the value of the charter, or the privilege that you have there?

Mr. ROMER. Yes, sir. Now, if the chairman pleases, we have nothing but what we would like to show you, etc.

FROM THE REPORT OF THE AMERICAN MEMBERS OF, INTERNATIONAL WATERWAYS COMMISSION.

In return for the impairment of the falls thus far authorized the State of New York will receive practically nothing for the 342,000 horsepower authorized on that side,

and the Queen Victoria Niagara Falls Park will receive an annual rental of \$170,000, or an average of 65 cents per horsepower for the 415,000 horsepower authorized on the Canadian side. These figures do not include the 8,000 horsepower being developed by the electrical railway nor the power developed by the Hamilton Company with water from the Welland Canal.

### What the Canadian Companies Pay

#### *Canadian Niagara Power Company.*

The company agrees to pay for its privilege an annual rental of \$15,000, for which it may generate 10,000 electrical horsepower or less; for all above 10,000 and under 20,000 horsepower it pays in addition to the above \$1 per annum for each horsepower; for all above 20,000 and under 30,000 it pays a further sum of 75 cents per annum for each horsepower; and for all above 30,000 it pays a still further sum of 50 cents per annum for each horsepower; that is to say, the annual rental for generating 30,000 horsepower will be \$32,500, and for generating 110,000 horsepower will be \$72,500.

The period for which the privileges are granted is fifty years from May 1, 1899, but the company is entitled, at its option, to three renewals of twenty years each, the rentals to be adjusted at the time of each renewal, if the lieutenant-governor in council so desires, and at the end of the third renewal the lieutenant-governor in council may require a still further renewal of twenty years; the entire period thus covered by the agreement being one hundred and thirty years.

#### *Ontario Power Company.*

The company agree to pay for its privilege an annual rental of \$30,000, for which it may generate 20,000 electrical horsepower or less. For all above 20,000 and under 30,000 horsepower it pays, in addition to the above, \$1 per annum for each horsepower; for all above 30,000 and under 40,000 it pays a further sum of 75 cents per



annum for each horsepower; and for all above 40,000 it pays a still further sum of 50 cents per annum for each horsepower; that is to say, the annual rental for generating 40,000 horsepower will be \$47,500, and for generating 180,000 horsepower will be \$117,500.

The period for which the privilege is granted is fifty years from April 1, 1900, but the company is entitled at its option, to three renewals of twenty years each, and after the third renewal the lieutenant-governor in council may require a fourth renewal of twenty years, the rentals to be adjusted at each renewal, the entire period thus covered by the agreement being one hundred and thirty years.

*Electrical Development Company.*

The company agrees to pay for its privileges an annual rental of \$15,000, for which sum it may generate 10,000 electrical horsepower or less; for all above 10,000 and less than 20,000 horsepower it pays in addition to the above, \$1 per annum for each horsepower; for all above 20,000 and less than 30,000 it pays a further sum of 75 cents per annum for each horsepower; and for all above 30,000 it pays a still further sum of 50 cents per annum for each horsepower; that is to say, the annual rental for generating 30,000 horsepower will be \$32,500, and for generating 125,000 horsepower will be \$80,000.

The period for which the privilege is granted is fifty years from February 1, 1903, but the same provisions are made for renewals as in the cases of the other companies, and the entire period covered by the agreement is thus one hundred and thirty years.

## Does the American Consumer Benefit?

MR. CLINTON ROGERS WOODRUFF, SECRETARY OF THE AMERICAN CIVIC ASSOCIATION.

\* \* \* It has not been testified that there has been any cheapening of the power to the consumers. It is merely a commercial venture.

Mr. BEDE. There was testimony as to the cheapening of the power.

Mr. JONES. There has been a project at Buffalo with a reduction from \$65 to \$56.

Mr. WOODRUFF. Would not that reduction be made anyway whether the falls were used or not? For instance, in Philadelphia the price of electricity has been reduced from \$110 to \$90.

Mr. BEDE. That was a result of the recent election.

Mr. WOODRUFF. It was the result of the people speaking.

Mr. BEDE. They testified that they could furnish power for \$20 a year, I believe.

Mr. WOODRUFF. I do not know personally, but Mr. McFarland has told me that there has been no substantial reduction to the consumer as the result of the utilization of the Niagara power. Competition may reduce the price.

\* \* \* \*

Mr. DAVIDSON. When you refer to the cheapening of the product to the consumer, you mean the article produced?

Mr. WOODRUFF. Street-car fares or lighting in your house or my house.

Mr. DAVIDSON. But the products which they manufacture throughout the country are not any cheaper?

Mr. WOODRUFF. To the individual consumer?

Mr. DAVIDSON. Yes.

Mr. WOODRUFF. I do not know, nor have I heard any statement as to the cheapening of power to the large consumers or manufacturers, but I mean a cheapening to the man who uses the street cars or the electric lights in his house or for personal purposes.

Mr. MCFARLAND. I would like to say—and Colonel Alexander can correct me if I am wrong—that the city of Buffalo pays as high as \$75 a year for 20,000-candlepower arc lights for its streets.

Mr. WOODRUFF. The city of Harrisburg pays \$46.50 for the same from coal; and I pay five cents for car fares in Buffalo, as you gentlemen do, while here you get six tickets for twenty-five cents, one being by the power derived

from Niagara, which is supposed to be cheap, and the other derived from coal.

Mr. ALEXANDER. In Buffalo we paid \$75 an arc light, but recently they have reduced it to \$56.

Mr. DAVIDSON. They have made a proposition to furnish them for \$56.

MR. CHARLES L. HUNTLEY, VICE-PRESIDENT OF THE CATARACT POWER AND CONDUIT COMPANY.

Mr. HUNTLEY. The price is \$56, and that has been accepted by the common council. I speak authoritatively, and not by hearsay, because I am in charge of the situation absolutely, having made the contract myself.

W. H. GRATWICK, ESQ., PRESIDENT OF THE BUFFALO CHAMBER OF COMMERCE.

The CHAIRMAN. Do you mean that the prices [of power] on the American side have not been reasonable since Buffalo has been utilizing the power?

Mr. GRATWICK. No.

The CHAIRMAN. And the only way in which it can be made reasonable is by importing power from Canada?

Mr. GRATWICK. I think that the only reasonable way is by competition, and the only source of that competition, and the only one we can get, is from Canada. And, further, I am convinced that we have an increasing number of industries in Buffalo. They are coming every month; they are investing millions of dollars; they will go where they can get the cheapest power, and you will find that if we prohibit the importation of electrical power from Canada a large proportion of these industries will locate in Canada with their American capital and labor.

The CHAIRMAN. Then you favor an unlimited importation of Canadian power?

Mr. GRATWICK. I do.

We can not get competition except through the Canadian power companies. Only recently that competition has made itself felt. The Buffalo Power Company have sold to the city light at \$56, whereas the former price was \$75.



And to private consumers they now charge nine cents per kilowatt, as against twelve cents formerly. There is a tangible result so far as the city of Buffalo is concerned by allowing the Canadian Power Company to come in.

The CHAIRMAN. What is the amount used in Buffalo?

„M. GRATWICK. They are selling about 85,000 h. p.

The CHAIRMAN. They have lowered the price of power in Buffalo?

Mr. GRATWICK. Oh, yes. The city and suburban lines are using it.

Mr. DAVIDSON. What do they pay for arc lights?

Mr. GRATWICK. Seventy-five dollars.

Mr. DAVIDSON. How long have they been paying \$75?

Mr. GRATWICK. Since 1898.

Mr. DAVIDSON. How does it compare with the price in Philadelphia, Baltimore, New York, and other cities?

Mr. GRATWICK. It is about the average price.

Mr. DAVIDSON. So that by reason of this cheap power produced at Niagara Falls, power to the city of Buffalo is not a great deal cheaper than it is in other cities?

Mr. GRATWICK. It is not yet, because there has been only once source from which we could get it. But we are now going to have this additional Canadian source, possibly. Last week the price was reduced from \$75 to \$56.

Mr. DAVIDSON. Was that brought about by competition with Canadian power?

Mr. GRATWICK. Yes, sir. That is the most vital thing to the city of Buffalo today. Do not understand me as advocating giving to every company all the theoretical and technical rights they have. But the city of Buffalo will stand behind you in any proposition which will give us more power at a cheaper rate.

### Price of Power to Large Manufacturers

MR. EDWARD G. ACHESON, OF THE INTERNATIONAL ACHESON  
GRAPHITE COMPANY.

The CHAIRMAN. How much per horsepower do you pay, or is that a secret contract?

Mr. ACHESON. I guess it is commonly known. They start with \$20 per year per horsepower for 1,000 horsepower, and that is diminished as you use it at the rate of 50 cents per horsepower up to an \$18 limit.

The CHAIRMAN. Eighteen dollars is the minimum?

Mr. ACHESON. Yes.

The CHAIRMAN. Down there by the Monongahela River, how much would the power cost per horsepower?

Mr. ACHESON. Well, with the little plant that I had—of course, 134 horsepower is rather small—it was costing from \$60 to \$70.

The CHAIRMAN. Suppose you had had seven or eight thousand horsepower down there; what would it cost?

Mr. ACHESON. Probably \$35, or \$40, probably.

The CHAIRMAN. So that the cost of the power here is approximately half what it would be there?

Mr. ACHESON. Yes; but to me the great advantage I spoke of was being able to call upon 1,000 horse power; to pay monthly for power without capital investment.

The CHAIRMAN. You can change the amount at will?

Mr. ACHESON. Yes, sir.

MR. M. A. VEILE, ENGINEER, NIAGARA COUNTY IRRIGATION AND WATER SUPPLY COMPANY.

If this development alone is carried out to the extent we hope, we will develop 450,000 horsepower. That means a revenue of \$9,000,000 a year, at \$20 a horsepower. That would develop that entire section of the country; it would give manufactured products, as Mr. Cooper said, of \$540,000,000 a year. We expect to transmit the power out through the West as far as Cleveland, going through all that section of country, and helping to develop it and build up their manufactures now unprofitable because they can not get the cheap power which can develop them.

Note.—Just as these pages are closed, it is learned that the Ontario Power Co., a Canadian corporation entirely controlled by American capital has sold power to the cities of Ontario at \$10.80 per horse power per year at the power house—a lower price than that enjoyed by any American consumer.

# Analysis of Power Development at Niagara Falls

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## UTILIZATION OF POWER AT NIAGARA FALLS.\*

Estimate Average Flow of Water over American and Canadian Falls .....	222,000 cubic ft. per second
Estimated Minimum Flow of Water over American and Canadian Falls .....	180,000 cubic ft. per second

## WATER DIVERTED BY AMERICAN USERS.

Niagara Falls Hydraulic and Manufacturing Co.....	4,000 cubic ft. per second	Limit permitted under revocable permits.
Niagara Falls Power Company.....	8,600 cubic ft. per second	6,500 cubic ft. per second
Eric Canal .....	333 cubic ft. per second	8,600 cubic ft. per second
Chicago Drainage Canal.....	4,166 cubic ft. per second	400 cubic ft. per second
		10,000 (to be utilized as needed)

Water now actually diverted. Limit permitted under revocable permits.

Totals .....	17,099	25,500
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WATER AS DIVERTED BY CANADIAN USERS.	
Now in Use.	Limit Permitted by Canadian Govt.
Canadian Power Co...2,500 cu. ft. per sec.	9,500 cu. ft. per sec.
Ontario Power Co...2,000 cu. ft. per sec.	12,000 cu. ft. per sec.
Electrical Devel. Co.	11,200 cu. ft. per sec.
Park Electric Co.....	1,500 cu. ft. per sec.
Welland Canal .....	1,800 (not specified)

Probable Use in Near Future.

Canadian Power Co.	160,000 H. P. for American use.
Ontario Power Co.	50,000 H. P. for Canadian use.
Electrical Devel. Co.	
Park Electric Co.	210,000 H. P. in all, or 17,500 cubic feet
Welland Canal .....	1,800

Totals .....	36,000	19,300 cubic feet.
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Total water actually diverted from Falls at this time by American and Canadian users, 24,099 cubic feet—10.8 per cent of average flow of American and Canadian Falls.

Total water which will be diverted in near future under grants already made, 44,800 cubic feet—20.1 per cent. of average flow of American and Canadian Falls.

Total water which may be diverted in near future if Canadian consumption of power warrants the development, 55,300 cubic feet—24.9 per cent of average flow of American and Canadian Falls.

Total water which will be diverted if American and Canadian grants are utilized to the limit, 61,500 cubic feet—27.7 per cent. of average flow of American and Canadian Falls.

\*Figures tabulated from government reports.



## Diversity of Opinion as to Depth of American and Canadian Falls

MR. CHARLES M. DOW, PRESIDENT OF THE COMMISSION OF THE  
NEW YORK STATE RESERVATION AT NIAGARA.

Regarding the present water conditions at Niagara, the following report was submitted to me Wednesday, April 18, by Superintendent Perry, of the Niagara Falls Reservation. The computations were made by Supt. E. H. Perry and James Wilson, who is superintendent of the Niagara Falls Victoria Park. Mr. Wilson is a competent civil engineer, a close observer of conditions, and has been superintendent of that park since it was acquired by the Canadian authorities, about twenty years ago.

The width of the crest of the American Falls is 1,060 feet; the average depth of the American Fall at the crest is now 1.22 feet.

Mr. BEDE. Is that on the American side?

Mr. Dow. Yes, sir.

Mr. BEDE. We have had testimony here that it is four feet.

The CHAIRMAN. I think that the consensus of the testimony is that it is nearly four feet.

Mr. SPARKMAN. How deep did you say that it was?

Mr. Dow. 1.22 feet. That information was telephoned to me.

The CHAIRMAN. Was that measured—was it an actual measurement?

Mr. Dow. No, sir.

Mr. RANDELL. Was that taken at a time when the east wind was prevailing?

Mr. Dow. No, sir; the conditions were normal. I took particular pains to be certain of that.

Mr. MCFARLAND. These gentlemen are State employes.

Mr. Dow. One of them is a State employe and one is an employe of the Canadian government.

Mr. BEDE. What volume do you claim goes over?

Mr. DOW. The report explains it.

Mr. BEDE. There is some difference on that point.

Mr. LAWRENCE. Did you say who made these figures?

Mr. DOW. They were made by Supt. E. H. Perry, and Mr. James Wilson, who is superintendent of the Niagara Falls Victoria Park, and has been for twenty years, and who is a civil engineer; and these statements are, to the best of their knowledge and judgment, correct.

The width of the Horseshoe Fall in 1890 was 3,010 feet. Owing to the recession and filling on the Canadian side by power companies the crest line is reduced to approximately 2,500 feet. That is the effect of concentrating the water, narrowing it up, which makes it appear as full as ever. This filling was done in 1904 and 1905.

The average depth of the water at the crest in 1890, as given by the United States engineers, was 8.8 feet; the average depth now at crest, 7.9 feet; the depth of the water at the deepest place, about 12 feet. We determine the depth by the amount of water, the velocity, and the width.

EDWARD HAGAMAN HALL, SECRETARY OF THE AMERICAN  
SCENIC ASSOCIATION.

Now, under that first subject, the danger to the falls, it seems to me that the statement of the Waterways Commission in section 26 of their report is well borne out. There is a certain mean volume to the falls there. You can compute how much is to be diverted, and you know how much is left. That is a physical proposition. The next question is, is it appreciable. Now, so much has been said on that that I would like to say just one word. Appreciable by what sense? You generally mean the sense of sight. If you had a pail of water 18 inches deep—and I use 18 inches because cakes of ice 18 inches thick have been known to lodge going over the American Falls—and you had that pail filled to the top, and you lowered the water one inch, you would appreciate it, because you would have all the data in your field of vision. You would have the top of the pail and the space between the top of the pail and surface of the water, and you would know that one inch was gone. If you take

an inch off from Niagara Falls you may not appreciate it at first for the reason that the criteria are spread over so vast an area that you can not get them all in into your field of vision. The crest of the American Falls is over 1,000 feet long. But if you take off an inch, that inch is gone just the same, and if you take off another inch, that is gone just the same. If you are out at sea, the tide rises, say, 10 feet, but you do not notice that because you are away from land and you have not the data for comparison and you do not appreciate it.

COL. O. H. ERNST, CORPS OF ENGINEERS, U. S. ARMY.

The CHAIRMAN. I take it, then, your position in the report is that some concession must be made to vested interests; it is not a concession that this amount can be withdrawn without injury to the Falls?

Colonel ERNST. That is it exactly.

The CHAIRMAN. Statements have been made that 40 per cent., or even 50 per cent., of water could be diverted without injury to the scenic beauty of the Falls. What do you say in regard to this?

Colonel ERNST. I do not believe that.

The CHAIRMAN. Do you regard 29 or 30 per cent. as dangerous?

Colonel ERNST. Yes, sir; I think we have gotten the limit, I think we are trying a dangerous experiment with this limit which we have proposed.

\* \* \* \*

Mr. LAWRENCE. Then, will you not tell us why you think that a diversion of one-third of the water would injure the scenic grandeur of the Falls?

Colonel ERNST. It seems to me self-evident that if you take one-third or even one-fourth of that water you would certainly diminish the volume of the falls; but when you come to feet and inches I can not tell you, and no other man can tell you, how much the deduction of a certain amount of water will lower that crest; because there is no hydraulic formula to work it out by. The crest is irregular; it is not straight, it is not horizontal, and no man knows



exactly how much water is going over there now. We put it at  $12\frac{1}{2}$  per cent.

The CHAIRMAN. That is on the American side?

Colonel ERNST. On the American side. The engineer of one company on the Canadian side says that it is only 10 per cent., and another hydraulic engineer puts it at 15 per cent. It is about 10 to  $12\frac{1}{2}$  to 15 per cent., and that is all any man can tell you as to the quantity of water going over there. The shape of that crest is absolutely unknown. Engineers have testified here that it has an average depth of four feet. They don't know; there is no way to find out. Some parts of it I know are not over a foot deep, because I saw a log lodged on it the other day—what we call a snag on the western rivers, a dead tree with the branches and roots removed.

MR. CLEMENS HERSCHEL, CONSULTING ENGINEER, NIAGARA FALLS HYDRAULIC POWER AND MANUFACTURING COMPANY.

The CHAIRMAN. You have been quoted, I believe, once or twice. If you desire to address the committee we shall be glad to hear you, or do you appear simply to answer inquiries?

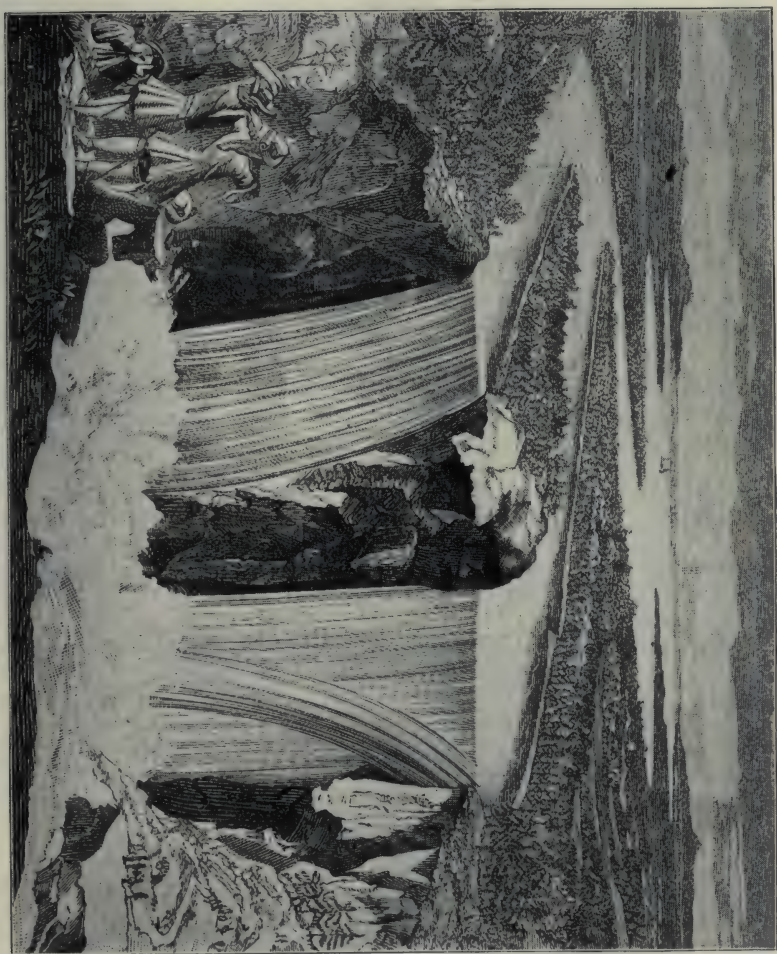
Mr. HERSCHEL. Only to answer inquiries.

The CHAIRMAN. What do you say about the quantity that can be taken from the river without interfering with the scenic grandeur of the falls?

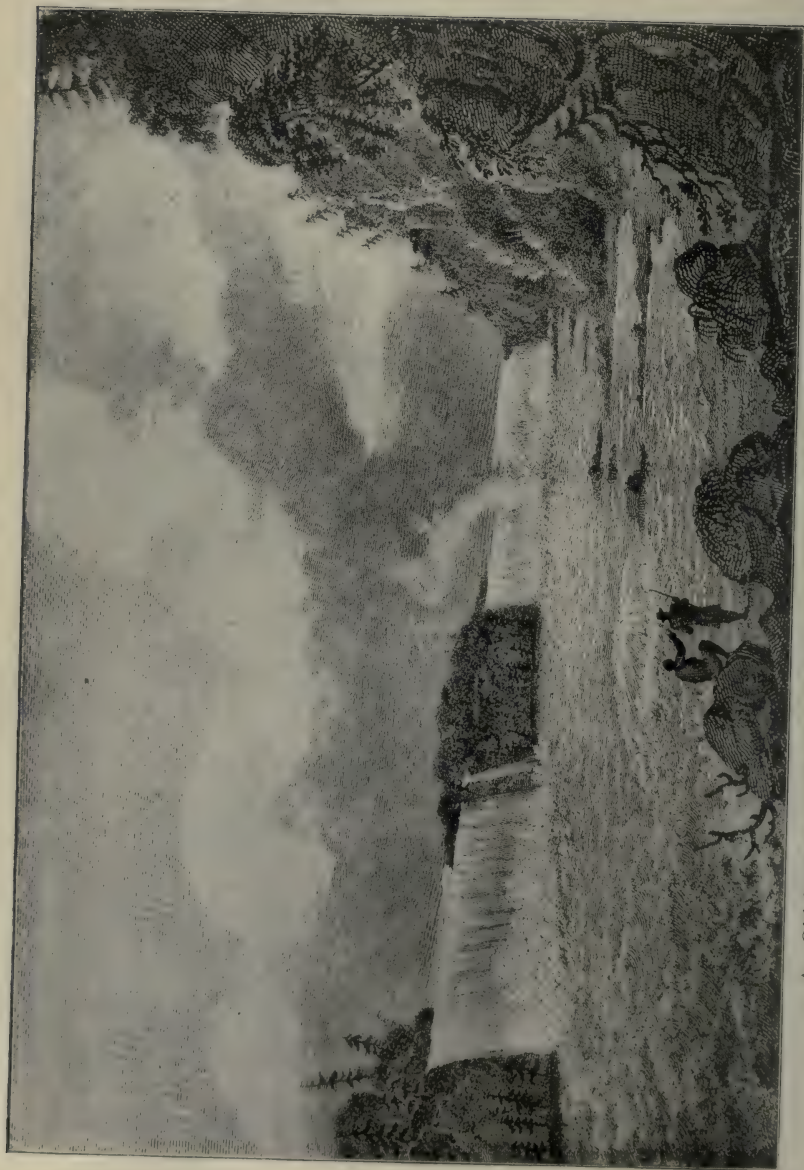
Mr. HERSCHEL. Well, grandeur is a term that is capable of a great many meanings. For myself, I do not know why a cataract of 111,000 cubic feet does not contribute as much scenic grandeur as one of 222,000 cubic feet. I should be satisfied with one of 111,000 cubic feet per second pouring over a fall of about 200 feet in height. I don't know any other that is more grand.

The CHAIRMAN. How do you determine what the result will be of the reduction of the flow? Do you know the contour of the crest on the two sides?

Mr. HERSCHEL. I have known Niagara Falls in a professional way for the last twenty-three years. I think I have done work up there for every company that is there,



The first Sketch of Niagara Falls. Made by Father Hennepin and  
Reproduced from his Account Published in 1698.



An Old Painting of Niagara Falls. From a Painting Made by Weld in 1796





From a Painting of Niagara Falls Made by Thomas Cole in 1837



General Plan of Niagara Falls and River

unless it be the last two on the Canadian side. I can not say how many times I have been there. I have made it a subject of study during all these years and have made a number of computations. I know, I presume, about as much about the shape of the crest of those two falls, the American and the Horseshoe, as anybody does.

The CHAIRMAN. Well, do you know what the contour is?

Mr. HERSCHEL. No absolute survey as to depth of waters has ever been made. But if you take the American Falls and consider it a body of water uniformly four feet deep flowing over it, you will have made no violent assumption with respect to the truth; and if you consider Horseshoe Falls a body of water with a depth of 14 feet, you will have made a fair approximation in that case to the truth. I can tell you what the 14-foot measure is based on. There was a time once when as a spectacle a schooner was allowed to go over the falls. That was in the fifties, I think. That vessel drew 14 feet and slid over without touching. So it may be safely asserted that it is 14 feet in depth there.

The CHAIRMAN. Is the depth uniform from side to side? Is there not a greater depth in the center than at the two sides?

Mr. HERSCHEL. Most certainly; but 14 feet is a fair representation of that falls.

Mr. LAWRENCE. Then we are to understand that the result of your study and observation is that 50 per cent. of the quantity of the stream can be diverted without marring the beauty of the fall?

Mr. HERSCHEL. Yes; I should say that.

MR. BRACKENRIDGE, ENGINEER, REPRESENTING CITY OF  
NIAGARA FALLS.

Mr. ALEXANDER. How deep do you say it is two feet out from Prospect Point, right on the crest of the Falls?

Mr. BRACKENRIDGE. As we looked at it today, I should think about 10 or 12 inches—10 inches probably.

Mr. ALEXANDER. And out seven feet, as we looked at it today?

Mr. BRACKENRIDGE. About the same.

Mr. ALEXANDER. Where does the green water begin—how far out?

Mr. BRACKENRIDGE. Thirty or 40 feet from the shore, probably.

Mr. ALEXANDER. How deep is it there?

Mr. BRACKENRIDGE. I have been trying to hedge that question. I think that it gets at that point about two feet deep, and I think there are points from there on to the middle of the Falls where it is three feet deep, and probably in some places over three feet. Now, the ledge where that log was suspended which you referred to I saw today; it was at a very shallow point on the brink of the Falls. If the log had come down in the middle of the channel at the deeper point it would have gone right over the Falls, but it happened to land where the water was very shallow.

Q. I suppose no one has taken any measurement of the Falls on either side, as to their actual depth; that is, you can not tell by measurement what the depth is?—A. Not in all parts of it, because they are not accessible.

Q. The American side—what would you say was the range in the depth; from what minimum to what maximum?—A. On the American side?

Q. Yes.—A. Well, of course there is a great variation in the depth, due to the direction of the wind.





Intake and Plant of the Canadian Niagara Power Co. at Horseshoe Falls

Q. At a normal stage, unaffected by the wind and about the normal flow, what would you say the depth was on the American side?—A. At about a normal flow, which is giving it about 224,000 cubic feet a second, the depth varies from three to four inches on the one side to perhaps three feet or over.

Q. How much over three feet, would you say?—A. I should think  $3\frac{1}{2}$ , possibly four, feet in the deepest point.

Q. That is on the American side?—A. Yes; that is my judgment.

Q. What would you say as to the depth on the other side, on the Horseshoe Fall?—A. It is very difficult. We have always assumed, taking the proportion of the flow and the amount of water passing over the Falls, that it must be about 12 to 14 feet deep in the deepest point. We can get a very good idea of the depth near the shore as far as the rock is visible, but after that we lose sight of it, and there is no way to approach it by which measurements can be made.



Excavating the Canadian Channel for one of the Power Plants

Q. Would you think 12 or 14 feet was the maximum?

—A. I should think that was about the maximum.

\* \* \* \*

MR. BRACKENRIDGE. I have always considered that about 40 per cent. was about the amount that could be diverted without really seriously injuring the appearance of the Falls.

MR. H. L. COOPER, ENGINEER, NIAGARA COUNTY IRRIGATION  
AND WATER SUPPLY COMPANY.

The CHAIRMAN. What is the depth of the Horseshoe Falls and what is the depth on the American side, respectively?

MR. COOPER. The average depth on the Horseshoe side is assumed to be somewhere in the neighborhood of 8½ feet.

The CHAIRMAN. And on the American side?

MR. COOPER. On the American side three feet nine inches to four feet.

## Depth of the Falls

Mr. ALEXANDER. What is the depth of water at the point where it goes over the precipice?

Mr. COOPER. That is what I am talking about now.

Mr. ALEXANDER. That is, three feet on the American side?

Mr. COOPER. Three feet and a half to four feet and a half on the American side; and from eight feet to nine or ten feet, according as the wind blows, on the Horseshoe side.

Mr. ALEXANDER. You say that all the water that is taken out now and proposed to be taken out by the works when they are completed will not reduce that water, which is three feet in depth, more than three inches?

Mr. COOPER. More than three inches; that is a fact capable of absolute demonstration.

Mr. JONES. Then how much water do you think could be diverted from the Niagara River without interfering with the scenic beauty of Niagara Falls?

Mr. COOPER. Without the doing of any further work, you mean?

Mr. JONES. Yes; under the present conditions?

Mr. COOPER. Well, I should say that under ordinary conditions an engineer would not be able to discover that business unless 40 to 50 per cent. was taken out. That seems to you, gentlemen, like an unreasonable statement, as it does to everybody at first, but it is a fact.

The CHAIRMAN. You were interrupted when you were explaining how the 40 or 50 per cent. could be withdrawn without destroying the scenic beauty. Is there anything more you desire to say on that subject?

Mr. COOPER. I mean to say this: That the people who want the scenic beauty—most of them a very estimable portion of our population—don't know anything about the quantity of water, and I say that as to quantity of water, whether it is 40 per cent. or 30 per cent., it can not be told by an engineer by the looks of it; and if that is so, what is our school man going to be able to tell about it? I am reminded of a German who went there and looked at the





View of Niagara Falls at Rear of Pittsburg Reduction Co.—Canal  
Diverting Water

American Falls, and then went and looked at the Horseshoe Falls, and his only remark in looking at the Horseshoe Falls was, "What a wonderful place to sponge pants!" I say we can prove all those things—

The CHAIRMAN. That is a very excellent bit of pleasantry, but that does not answer the question, which is a scientific one and to which we would like to receive a scientific answer—

Mr. COOPER. All right, sir; I beg your pardon if I did not understand the question.

The CHAIRMAN. How can you withdraw 40 or 50 per cent. of the water and not destroy the scenic beauty of the Falls?

Mr. COOPER. The length of the crest would be practically the same in each case, and you can not tell anything about the depth of the crest inside of those limits by looking at the water flowing over it. That is the specific answer to your question.



Gate House of the Ontario Power Co.

The CHAIRMAN. That is, the width of the Falls would be the same?

Mr. COOPER. Practically the same.

The CHAIRMAN. That is, you eliminate the idea of the volume of the flow having anything to do with the scenic beauty or grandeur of the Falls?

Mr. COOPER. Yes, sir; I think within those limits the volume is not susceptible to the eye or ear.

Mr. BURGESS. You think, in other words, that if the water is three feet deep, it would look as pretty and sound as well as if it were six feet deep?

Mr. COOPER. I do not think it would be discernible whether it was three feet deep or four feet deep.

JOHN L. ROMER, COUNSEL FOR THE NIAGARA FALLS HYDRAULIC POWER AND MANUFACTURING CO.

Mr. LAWRENCE. What is your opinion as to the amount of water that can be diverted without impairing the beauty of the Falls?

Mr. ROMER. That is a question for the engineers rather than for me.



Mouth of Canal—Niagara Falls Power Co.

Mr. LAWRENCE. I expect that you have given it a good deal of thought, though.

Mr. ROMER. We have given it a great deal of thought. Mr. Cooper said that it was 40 per cent. I struck me while he was saying that, that 40 per cent. is a little high. I would not undertake to say about that. Mr. Harper is our engineer. What do you say, Mr. Harper?

Mr. HARPER. I believe that the abstraction of water could be made 33 per cent. from the Canadian Falls, and 20 per cent. from the American Falls, without greatly destroying the scenic beauty.

Mr. LAWRENCE. How much would that amount to, put in cubic feet—the total?

Mr. ROMER. That would amount to something slightly in excess of the amount stated on page 9 of this waterways commission report, or in the neighborhood of 70,000 cubic feet.

Mr. HUMPHREYS. You say without destroying the beauty of the Falls?

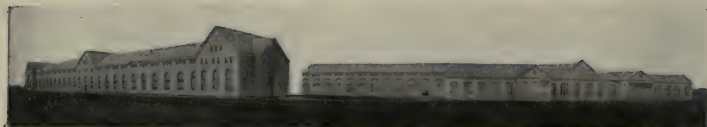


Mr. LAWRENCE. You did not mean to make it as strong as that, did you?

Mr. HARPER. I meant without seriously affecting it.

Mr. LAWRENCE. This would make it 70,000 cubic feet per second?

Mr. HARPER. Yes, sir.



Generating and Transforming Station of the Niagara Falls  
Power Co.

# Shall Commercialism or Esthetic Altruism Dominate ?

FROM THE REPORT OF THE AMERICAN MEMBERS OF THE INTERNATIONAL WATERWAYS COMMISSION.

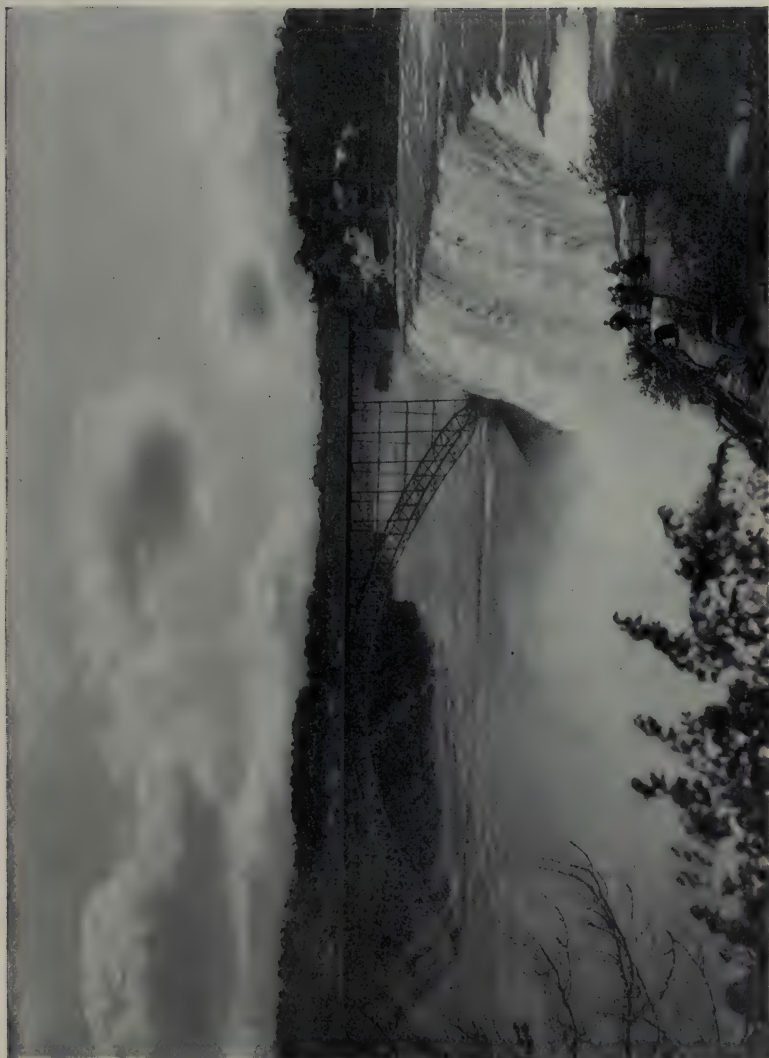
If all the water and all the head from the top of the upper rapids to the foot of the falls could be utilized, there would result over 4,000,000 mechanical horsepower. Probably space could be found, if desired, for works which would utilize about half of this, or, say, 2,000,000 horsepower, or possibly more. As they could not utilize all the head, they would use much more than half the water. It will require time to create a market for all this power, but it is reasonably certain that it will in due season be found if the development of the power itself is to go on unchecked. The difference in cost in favor of falling water over any other method of developing power is so great that all other methods are sure to be abandoned where sufficient water power is available. The difference at Niagara Falls is probably not less than \$15 or \$20 per annum per horsepower. The cost of transmission to distant points increases with the distance, and finally becomes so great as to be unprofitable; but electrical engineers are engaged in improving the methods and reducing the cost. An average difference of cost for each horsepower can not now be given with any close degree of approximation, but the difference, whatever it is, is a perpetual annual saving, which, if capitalized, will show that the commercial value of the power at Niagara Falls is very great and is to be measured by the hundred millions of dollars.

Whether this commercial asset shall be utilized to such an extent as to seriously impair the majesty and scenic beauty of the falls depends upon the public will. In our opinion the commercial advantage of a large increase in development of power will not compensate for the great loss to the world of the inspiration, esthetic education, and opportunity for recreation and elevating pleasure which



The American and Canadian Falls from the Bridge. On the left is the Inclined Railway. On the right, across the River, is the "Italian Renaissance" Power House of the Ontario Power Co.





View of American Fall from Goat Island



Interior of Power House of the Niagara Falls Power Co.

the mighty cataract affords. The direct advantages to the public from revenue is nothing on the New York side of the river, and comparatively slight on the Canadian side. There is of course an indirect advantage due to added taxable wealth and reduction in the cost of power, but these advantages are, in our opinion, slight in comparison with those which spring from the preservation of the beauty and majesty of the falls in their natural condition. Over 800,000 people visit the falls annually, deriving pleasure and inspiration from them. The nations of the world have always recognized the great value of parks and reservations, and throughout the civilized world they have preserved places of natural grandeur and beauty and furnished parks, artificially beautified, for rest, education, and the elevation of their people. An illustration may be given in the case of the city of New York, one of many hundreds. There the municipality has acquired, in Central Park, property which is estimated to be worth \$225,000,000, and has spent millions upon improvement and ornamentation. The

United States Government has reserved lands of striking picturesqueness, grandeur, and interest, regardless of their value. These illustrations would seem to prove conclusively that the people are not inclined to offset mere commercial values against the intangible but none the less great advantages found in the preservation of the great works of nature. . . .

(a) The glory of Niagara Falls lies in the volume of water rather than in height, or in surrounding scenery.

(b) Works are now authorized and partially completed at the falls which will divert from the Niagara River above the falls about 27 per cent. of the average discharge, and about 33 per cent. of the low-water discharge, which is more than double the quantity now flowing over the American Fall. In addition to this, water naturally tributary to the Niagara River is being diverted through the Chicago Drainage Canal, and for power in addition to navigation purposes through the Erie and the Welland canals.

(c) The effect of this withdrawal of water is to injure both the American and the Horseshoe falls in nearly equal proportions. While the injury will be perceptible, it may not be destructive or disastrous.

(d) Improvements in the transmission of electric power and increased demand will make a market for all the power which can be developed at Niagara Falls, and will cause a destruction of the falls as a scenic spectacle if the development be allowed to go on unchecked.

(e) Charters have been granted to corporations which propose to divert additional amounts in quantities not now limited.

(f) The sums of money invested, or being invested, in the works now in operation or under construction, and in the industries dependent upon them, amount to many millions of dollars. It is probably not expedient to attempt the withdrawal of the rights thus utilized.

(g) The commercial value of the water power at Niagara Falls is very great, but if compared with values set



aside by wealthy communities elsewhere for park purposes this value is not too great to be devoted to similar purposes. The place is visited annually by about 800,000 people.

EUGENE CARY, ATTORNEY-AT-LAW, OF NIAGARA FALLS.

There has grown up here in the last few years a city—the mayor did not fully state the growth, because the Niagara Falls Hydraulic Power and Manufacturing Company began taking water from here in the seventies—and the little village of four or five thousand has grown to the city of nearly 30,000. Here processes have been put in operation by cheap power, which are not merely completing an industrial development here, but which will contribute to the industrial development of the whole nation. Here aluminum, which is used in making Government armor plate, has been reduced nearly to one-half its former price and being manufactured on an enormous scale and the company is planning to largely increase that product and has already contracted for the machinery and apparatus. Bleaching powder, entering into so many processes, is being made here cheaper than ever before and other processes of the same kind, the use of which and the benefit of which is not confined to this Niagara frontier, but which enter into processes of manufacture all over the United States. I think it is within the bounds to say that the passage of this bill will strike a blow to material interests not less in effect than the Baltimore fire—a destruction of material interests as great as that will take place by the passage of this bill.

Now, as I say, there can not be any question in my mind that no impairment of the Falls at the present time has taken place. I would like to quote the language of one of our oldest residents, published in the paper a week ago. He said: "Few can say as I can, that they have lived within the sound of the cataract for seventy-five years and for more than fifty years within gunshot," and then goes on to say that he would not misrepresent; the simple truth is sufficient; go and look upon the river—look upon the tumultuous rapids and ask when, except when affected by

very high winds, was the flow of water greater than today? There are numerous gentlemen in this city of the very highest character and standing who can be produced before you and who will testify to the same effect.

Now, gentlemen, I submit that the development of the industrial resources of the nation has always been a matter of Congressional concern; every tariff bill upon our books from the foundation of the Government testifies to the interest of Congress in the industrial development of the Nation, and we ask that this bill be so amended as to permit a further industrial development in so far as it can be done—at least in so far as it can be done without material injury to the beauty of the Falls. The test of the effect of this diversion of water is the human eye. Until the eye of the average observer can see that the Falls has been injured by diversion no injury has been done to scenic beauty. Of course these matters have all been carefully considered by you, but I speak here to testify for the people of this city, who love the Falls as much as the people of any community can, that this talk of injury up to date has been grossly exaggerated.

FRANK A. DUDLEY, ESQ., COUNSEL, NIAGARA FALLS ELECTRICAL TRANSMISSION COMPANY.

While it is perhaps difficult to justly weigh the relative importance of benefiting the material or the esthetic side of mankind, the great mass of our people can not afford the time or money to obtain the "esthetic education" for which the Falls seems principally useful in the opinion of the Waterways Commission. The power developed has enabled the State of New York, through its manufacturers, to produce directly and electro-chemically many of the most important products for the progress, comfort, and well being of all our people. I might mention flour, food products, paper of all kinds, caustic soda, bleaching powder, numerous by products from chlorine, aluminum, graphite, carborundum (now used as a substitute for emery), phosphorus products, carbide for acetylene gas, sales

slips, machinery of nearly all kinds, silverware and cutlery, and, in fact, almost all manufactured products known, and by reason of new methods in manufacture, made possible by electric power, the price to the consumer has been and is bound to be materially lessened.

Many products heretofore principally obtained from foreign countries are now produced in western New York by the use of electric power. Not only will we obtain the benefits of new and cheaper products, but continuous employment will be given to a great number of our citizens. It seems to me it is equally as beneficial to mankind to permit of those things which will contribute to their material welfare and give them employment, food, clothing, and homes, as it is to educate their esthetic tastes.

What is true of Niagara Falls is proportionately true of every beautiful river and falls in the United States. Van Dyke says he gets the most enjoyment out of little rivers. Others like best the turbulence of Niagara, the Columbia, and the Snake. It takes the beautiful rivers of the west and destroys their falls and cataracts to reclaim the vast American desert, and this is being done by Congress on the suggestion of our President.

The Great Snake River, with its mighty falls at Shoshone of over 200 feet—one of the great spectacles of this country and the only falls that can be compared with Niagara in volume of water and exceeding it in length of descent—is, I believe, to be largely sacrificed in the great Shoshone irrigation project—this for agricultural purposes.

It takes the waters from the beautiful rivers and falls of the State of Washington to irrigate the great Yakima Valley, the agricultural part of that State, and to develop the power that is now assisting in producing those empire cities on that sapphire sea, Puget Sound. . . .

We do believe it highly commendable that steps should be taken to preserve the scenic features of the falls, but in doing so we do not believe it necessary to confiscate property or destroy manufacturing, commercial, and railroad enterprises entered into, now partially or nearly completed.



## The Power Companies' Esthetic Sense

FRANCIS LYNDE STETSON, REPRESENTING THE NIAGARA FALLS POWER COMPANY AND CANADIAN NIAGARA COMPANY.

I would be willing to give a tenth of all I have in the world, and more, to restore all along Niagara River from Buffalo to Lewiston the glorious forests that once stood there, as now they stand on Goat Island; on either side of the stream, to restore it in every respect, in every surrounding, in scenery, in all that will constitute the elements that gratify the lover of landscapes and the glory of nature, following, as I have many times, the course of the river from Chippewa Creek to Lewiston, where you get the counterpart of Cole's *Voyage of Life*; starting in the placid waters of the upper Niagara, with childhood's innocence of danger, then rushing through the turbulent rapids and plunging over the cataract of youth and early manhood; coursing through the lower rapids in the vigor of full maturity; and at last coming out into life's placid finish as you enter the fond and shining embrace of Lake Ontario.

I defy any man to love Niagara River and Falls more than I. The love of those who have spoken in the words of the poet, as compared to mine, "Is as moonlight to the sunshine, and as water is to wine." I repudiate and scorn the idea that any advertising agency or propaganda, however powerful, has a monopoly of the love, or of the proclamation of love of Niagara and Niagara Falls.

I maintain, then, that I am entitled to speak as one who knows and loves, and would respect and perpetuate Niagara Falls in all its glory and in all its sublimity. Is that a mere statement? Is that contested by my acts? Am not I one of these people who would turn that power to commercial use? Am not I one of these people who are resisting the efforts of others who, under the sham application of the commerce clause of the United States, are endeavoring to turn the Federal Government into an agency to destroy commercial development? Yes, I am; I am one of those. I think that, within reasonable bounds, it is

better for mankind that to this extent the waters of Niagara River should be so employed, as we can not now restore the primeval conditions which I would prefer.

POWER NOT DEVELOPED FOR PROFIT ALONE.

Mr. McFarland refers to the greed of these companies. The extent of that greed may be indicated by the fact stated by me at the July hearing, that for fifteen years the Niagara Falls Power Company has been contented to continue with a cash investment of over \$20,000,000, receiving only ordinary interest upon the cash investment represented by its bonds, and without a dollar of dividend upon its stock, in which alone could be found any opportunity for real profit. A corporation whose activities and energies are directed to and satisfied by the return of ordinary interest can not justly be accused of greed.

I understand that some comment has been made upon the statement that no dividends had been received as being a statement that means nothing. It means everything. It means that we have received only ordinary interest, and that always the profit has had to go back into the property, and there it stands today, with the stock selling at 50 cents on the dollar. I say that, so far as the Niagara Falls Power Company is concerned, it was not started with the main purpose of commercial profit. There was never a promise of large commercial profit. Men were attracted, and perhaps deluded, with the idea of the useful service that they were rendering to mankind by producing electrical power in this novel way, of which we were the pioneers for the whole world. . . .

As I say, this company is now delivering more than 100,000 horsepower at prices which, though misrepresented and ridiculed by Mr. McFarland, are readily accepted by hundreds of users, and this without compulsion.

Nobody is obliged to use our power. All of the takers could have continued to use steam engines. Why should they use our power to the extent they are using it—100,000? Why do none of them give it up? . . .

When this charge was made a most remarkable state-

ment resulted. Every user of Niagara power in the city of Buffalo—not one, not two, but everyone—wrote us a letter, and those letters were published, covering two full pages of the Buffalo papers, showing their satisfaction with our service. We have no trouble with our customers.

Let us see what these prices are. The Niagara Falls Power Company has published its schedule for standard ten-hour meter power at a rate which offers a maximum use of 100 horsepower and an average use of 75 horsepower for a month of 250 hours, at an aggregate price of \$144.17. This compares with the following reported charges in six important northern cities:

Boston .....	937.50
Philadelphia .....	839.25
New York .....	699.37
Chicago .....	629.43
Cleveland .....	559.50
Rochester .....	419.62
Niagara Falls .....	114.17

In the face of such figures, who can doubt the beneficent effect of the operations of the Niagara Falls Power Company, furnishing power at not more than one-fourth of the cost in New York, Chicago, or Cleveland, and at less than one-fifth of the cost in Boston or Philadelphia?

## The Function of the Niagara Improvement Commission

By Frederick Law Olmsted, Jr.

**I**N exercise of the discretion allowed to him under the Burton Act the Secretary of War decided, as a condition to the issuing of permits for the use of the water of Niagara for power purposes and for the importation of power derived from the water of Niagara, to require that certain needlessly objectionable features incident to the development and use of the power should be mitigated; and as a commission to advise him in specifying what features must be changed and in what manner, he appointed



Charles F. McKim, Frank D. Millet and Frederick Law Olmsted, Jr., and assigned Captain John S. Sewell and Captain Charles W. Kutz. The instructions of Secretary Taft to this commission were to specify any practicable improvement in the conditions affecting the scenery of Niagara which could be made by the users or importers of power and the cost of which would not be unreasonably large in view of the present investments of the companies.

The commission has held meetings in New York and at Niagara, has carefully examined the conditions on the ground and conferred with representatives of the power companies and the authorities in charge of the State and Provincial Reservations, and is now engaged in preparing its report to the Secretary.

It is apparent that the recommendations of the commission, concerning such immediate improvements as the Secretary of War can require the users of power to make, must be confined to matters of detail, chiefly in the district along the Gorge on the American side just below the suspension bridge. This is a manufacturing district which has grown up in the same helter-skelter fashion and with the same disregard of decency, cleanliness and orderly appearance that has generally characterized the "back sides" and especially the river banks of American manufacturing districts. The Gorge of Niagara, in full view of those who come to enjoy the beauty of its scenery, has simply been used as other river banks in manufacturing districts have been used, for the dumping of rubbish of all sorts. In common with hundreds of other less conspicuous manufacturing localities it exhibits a complete indifference to the qualities which distinguish the homes of civilized men and women from those of savages or the premises of a good housekeeper from those of a slattern. The kind of changes which are soon made in her surroundings by a tidy, cleanly, energetic woman, however poor, when she is so unfortunate as to come into a tenement that has been left in a dirty, shabby, disorderly condition by the previous tenant, or which quickly take place in the

looks of a dirty, ill-disciplined steamship when a competent first-officer takes hold of her, may reasonably be demanded in the fringes of the manufacturing district at Niagara under the authority which the Secretary of War derives from the Burton Act. But such changes do not convert a tenement house into a palace or an Arcadian cottage, nor a tramp steamer into a yacht, and they cannot be expected alone to convert a conspicuous manufacturing district that has grown up under stimulus of the narrow commercial individualism of the nineteenth century into a harmonious element in the scene of impressive natural grandeur for the sake of which the public goes to Niagara Falls.

There remains to be considered soberly, earnestly, patiently, and with the greatest breadth of outlook, with due regard for all points of view, economic, esthetic and social, this question: In what way can Niagara be made of the highest service to mankind, and by what practicable course of action during the next twenty-five years can that end best be promoted?

## Develop Power Until Falls are Improved— Then Buy off Companies

W. CARYL ELY, REPRESENTING THE CHAMBER OF COMMERCE  
OF BUFFALO, N. Y., BEFORE SECRETARY TAFT.

The United States Government certainly is not called upon to exercise some great, mighty, mysterious, and inchoate power to do something to this stream. That is not called for. The United States Government is not going to deprive any of its citizens of their property without making due compensation therefor, and why should we not proceed in disposing of these matters along intelligent lines, and when, if ever, Niagara shall be impaired in her beauty or grandeur, then let compensation be made, fair and just compensation, and all the water of the Falls resumed by the Government if such shall be the desire.

It never was intended by this legislation that contract rights that have been created and which are beneficial to

hundreds of thousands of the citizens of the State of New York and of the United States should be interfered with arbitrarily, nor that rights upon which millions of dollars have been expended and upon the faith and reliance in which thousands of people have changed their habitations and removed to places about the Falls should be rudely stricken down. On the contrary, as it has seemed to me was justly interpreted by the Secretary, those rights and investments of capital should be preserved in so far as was not inconsistent with preserving the integrity of the Falls themselves.

In conclusion, I must say that it seems to me that the field of sentiment has been unfairly invaded; that some one has run amuck among the good-feeling esthetic people of the United States, and as usual under such circumstances produced harm rather than benefit. Sentiment governs the most sacred relations of our lives. Almost all marriages in this country are matters purely of sentiment, and the family is the very foundation of our institutions. Sentiment governs us in our best actions, but that is proper sentiment founded upon fact and correct conception. Sentiment that has been produced by misstatements and garbled facts, for the purpose of bringing pressure to bear upon public officers in the discharge of their duties, is unworthy of attention, and it dishonors those who, yielding to it, join in an unworthy undertaking, and disgraces those who are guilty of working it up. I can not refrain, sir, from making this allusion to the methods of some of those who have sought in an improper way to create an atmosphere here that would render it difficult for you to dispose of this matter in any other than the way consistent with their desires.

MR. FRANK A. DUDLEY, COUNSEL FOR THE NIAGARA FALLS  
ELECTRICAL TRANSMISSION COMPANY.

Mr. DUDLEY. I am interested in the Electrical Transmission Company as I have explained, and I will ask that we be permitted to carry out our contracts. That is as far as I represent the power company in which I am can-



cerned, and as representing the city of Niagara Falls and other municipalities through western New York, I will state that the amount of water diversion which will impair the scenic qualities of the Falls ought to be definitely determined. In my opinion that amount has not yet been reached, and will not be reached even by taking power desired by the General Electrical Company. Whenever that is ascertained or reached then it will be time to prohibit further development along that line. I do not wish to advocate any power monopoly because I am not interested in them, but there is a time coming when, after due and serious deliberation, the development of any further scheme may be prohibited.

The CHAIRMAN. Then you would favor waiting until the time is reached when the beauties of the falls are materially injured by the diversion of the water before you would favor legislation?

Mr. DUDLEY. No; but I would say that the information that has been given to you has been—except of course as to the statement of the International Waterways Commission—largely misinformation, and until you obtain the accurate facts you will not be able to determine when the time is reached that the falls are in imminent danger. No franchise which is now outstanding will ever impair the scenic qualities of the falls. . . . .

Mr. LAWRENCE. What percentage of the flow do you consider it would be safe to be authorized to be diverted?

Mr. DUDLEY. There would be no risk in anything up to 30 per cent.

The CHAIRMAN. Then you do not agree with Mr. Cooper's estimate of 40 to 50 per cent.?

Mr. DUDLEY. I do not recall what his estimate was.

The CHAIRMAN. Your general opinion is that it should be not more than 30 per cent.?

Mr. DUDLEY. I should say that surely there should be no risk of impairment if that amount of water were diverted.

Mr. LORIMER. The American Falls is more shallow

over the crest than the Canadian Falls, and a like percentage would more quickly affect the scenic beauty there than it would on the Canadian side.

Mr. DUDLEY. Not necessarily, because the waters will readjust themselves. If a certain amount of water were to be taken from the American side it would be unwise to take more than 30 per cent.

The CHAIRMAN. Some estimate has been made of the amount that might be taken on the Canadian side near Goat Island.

Mr. DUDLEY. I do not know about that. So far as the electrical company is concerned—that is, the company in which I am interested—the amount it takes does not affect the falls one particle. . . .

The CHAIRMAN. You say you think it is desirable to take measures to preserve the scenic beauty of the Falls. The committee desires information on that point. What measure do you think should be taken to preserve the scenic beauty of the falls?

Mr. DUDLEY. I was never called upon to consider that until last Friday, but my mind has been working rapidly ever since, and yet I do not know that I have come to any conclusion that would be worthy of presentation to this committee. I do not think, however, that the limit has yet been reached, so far as it relates to the diversion of water, which will affect in any way (at least to the observer) the scenery of the Falls. A prohibition can be imposed whenever it is determined that prevention of further diversion of the water is necessary—a prohibition that would accomplish results.

# Power Permits Under the Burton Law

Opinion by Wm. H. Taft, Secretary of War.

**T**EN or more applications have been filed in this Department for the issuing of permits by the Secretary of War, part of them for the diversion of water for power from Niagara Falls on the American side, and the remainder for the transmission of electrical currents, developed from water diverted from the Falls on the Canadian side, into the United States. These applications are filed under what is known as the Burton Act, passed June 29, 1906, and entitled "An Act for the control and regulation of the waters of Niagara River, for the preservation of Niagara Falls, and for other purposes."

The first section of the act forbids the diversion of water from the Niagara River, or its tributaries in the State of New York, except with the consent of the Secretary of War, as authorized in Section 2, with a proviso, the meaning of which is not here important.

The second, fourth and fifth sections of the act I set out in full as follows:

"Sec. 2. That the Secretary of War is hereby authorized to grant permits for the diversion of water in the United States from said Niagara River or its tributaries for the creation of power to individuals, companies or corporations which are now actually producing power from the waters of said river, or its tributaries, in the State of New York or from the Erie Canal; also permits for the transmission of power from the Dominion of Canada into the United States, to companies legally authorized therefor, both for diversion and transmission, as hereinafter stated, but permits for diversion shall be issued only to the individuals, companies, or corporations as aforesaid, and only to the amount now actually in use or contracted to be used in factories, the buildings for which are now in process of construction, not exceeding to any one individual, company or corporation as aforesaid, a maximum amount of eight thousand six hundred cubic feet per second, and not exceeding to all individuals, companies or corporations as aforesaid an aggregate amount of fifteen thousand six hundred cubic feet per second; but no revocable permits shall be issued by the said Secretary under the provisions hereafter set forth for the diversion of additional amounts of water from the said river or its tributaries until the approximate amount for which permits may be issued as above, to-wit, fifteen thousand, six hundred cubic feet per second, shall for a period of not less than six months have been diverted from the waters of said river or its tributaries, in the State



of New York; provided, that the Secretary, subject to the provisions of section five of this Act, under the limitations relating to time above set forth is hereby authorized to grant revocable permits, from time to time, to such individuals, companies or corporations or their assigns, for the diversion of additional amounts of water from the said river or its tributaries to such amount, if any, as, in connection with the amount diverted on the Canadian side, shall not injure or interfere with the navigable capacity of said river, or its integrity and proper volume as a boundary stream, or the scenic grandeur of Niagara Falls; and that the quantity of electrical power which may by permits be allowed to be transmitted from the Dominion of Canada into the United States, shall be one hundred and sixty thousand horsepower; provided further, that the said Secretary, subject to the provisions of section five of this Act, may issue revocable permits for the transmission of additional electrical power so generated in Canada, but in no event shall the amount included in such permits together with the said one hundred and sixty thousand horsepower and the amount generated and used in Canada, exceed three hundred and fifty thousand horsepower; provided always, that the provisions herein permitting diversions and fixing the aggregate horsepower herein permitted to be transmitted into the United States, as aforesaid, are intended as a limitation on the authority of the Secretary of War, and shall in no wise be construed as a direction to said Secretary to issue permits, and the Secretary of War shall make regulations preventing or limiting the diversion of water and the admission of electrical power as herein stated; and the permits for the transmission of electrical power issued by the Secretary of War may specify the persons, companies or corporations by whom the same shall be transmitted, and the persons, companies or corporations to whom the same shall be delivered.

"Sec. 4. That the President of the United States is respectfully requested to open negotiations with the Government of Great Britain for the purpose of effectually providing, by suitable treaty with said government, for such regulation and control of the waters of Niagara River and its tributaries as will preserve the scenic grandeur of Niagara Falls and of the rapids in said river.

"Sec. 5. That the provisions of this Act shall remain in force for three years from and after date of its passage, at the expiration of which time all permits granted hereunder by the Secretary of War shall terminate unless sooner revoked, and the Secretary of War is hereby authorized to revoke any or all permits granted by him by authority of this Act, and nothing herein contained shall be held to conform, establish, or confer any rights heretofore claimed or exercised in the diversion of water or the transmission of power."

The third section provides a punishment for violations of the act, and the method of enforcing it.

The plain purpose of the act is to restrict, as far as lies in the power of the Congress, the diversion of the water from the Niagara River above the Falls in such a way as to reduce the volume of the water going over the Falls, and the plan of Congress in so doing is to effect this

purpose by directly prohibiting the diversion of water on the American side, and by taking away the motive for diverting water on the Canadian side, by denying a market for electrical power generated on the Canadian side in the United States. The prohibition in the act is not absolute, however. It is clear that Congress wished, so far as it could, to accomplish its purpose with as little sacrifice of the pecuniary interests of those who had actually made investments, on the faith of the continued unrestricted diversion of water on the American side, or the continual unrestricted transmission of electrical power from Canada into the United States, as was consistent with the preservation of the integrity and volume of the Niagara River passing over the falls.

The International Waterways Commission, a body appointed under a statute of the United States to confer with a similar body appointed under a statute of Canada, to make recommendations with reference to the control and government of the waters of the Great Lakes and the valley of the St. Lawrence, have looked into the question of the amount of water which could be withdrawn on the American and Canadian side of the Niagara River without substantial injury to the cataract as one of the great natural beauties of the world, and after a most careful examination they have reported, recognizing fully the necessity of preserving intact the scenic grandeur of the Niagara Falls, that it would be wise to restrict diversion to 28,600 cubic feet a second on the American side of the Niagara River (this to include 10,000 cubic second feet for the Chicago Drainage Canal), and to restrict the diversion on the Canadian side to 36,000 cubic feet a second. This report was in answer to a resolution of Congress calling for an expression of opinion, and thereupon Congress provided that the Secretary of War should be permitted, but not required, to issue permits in the first instance for the diversion of 15,600 cubic feet on the American side of Niagara River and in the Erie Canal, to persons or corporations actually engaged in the diversion of water and its use for power

on that side, for six months, with leave to increase the same after six months shall have shown the effect of such diversion, if it will not affect the scenic grandeur of the Falls. Congress further provided in the act, with reference to the power generated on the Canadian side, that the Secretary of War should be authorized, but not required, to issue permits for the transmission of 150,000 H. P. from the Canadian side to the markets of the United States, and then provided that he might issue revocable permits for the transmission of a larger amount, provided that the total amount transmitted, together with that generated and used on the Canadian side, should not exceed 350,000 H. P. or the equivalent of the diversion from the falls of about 28,000 cubic feet of water.

I have already said that the object of the act is to preserve Niagara Falls. It is curious, however, that this purpose as a limitation upon the granting of permits by the Secretary of War is only specifically recited in reference to his granting of permits for diversion of additional amounts of water over 15,600 cubic feet on the American side, which are to be limited to "such amount, if any, as in connection with the amount diverted from the Canadian side, shall not interfere with the navigable capacity of said river or its integrity and proper volume as a boundary stream, or the scenic grandeur of Niagara Falls." This peculiarity in the act is significant of the tentative opinion of Congress that 15,600 cubic feet of water might be diverted on the American side and 160,000 electrical H. P. might be transmitted from the Canadian side without substantial diminution of the scenic grandeur of the Falls. Undoubtedly Congress left it to the Secretary to reduce this total thus indicated in the matter of permits, if he differed with this intimation of the Congressional view. Acting, however, upon the same evidence which Congress had, and upon the additional statement made to me at the hearing by Dr. John M. Clark, state geologist of New York, who seems to have been one of those engaged from the beginning in the whole movement for the preservation of Niagara Falls, and who has given



close scientific attention to the matter, I have reached the conclusion that with the diversion of 15,600 cubic feet on the American side, and the transmission of 160,000 H. P. from the Canadian side, the scenic grandeur of the falls will not be affected substantially or perceptibly to the eye.

With respect to the American Falls, this is an increase of but 2,500 cubic feet a second of what is now being diverted, and has been diverted for many years and has not affected the Falls as a scenic wonder.

With respect to the Canadian side the water is drawn from the river in such a way as not to affect the American falls at all, because the point from which it is drawn is considerably below the level of the water at the point, where the waters separate above Goat Island, and the Waterways Commission and Dr. Clark agree that the taking of 13,000 cubic feet from the Canadian side will not in any way affect or reduce the water going over the American Falls. The water going over the falls on the Canadian side of Goat Island is about five times the volume of that which goes over the American falls, or, counting the total as 220,000 cubic feet a second, the volume of the Horseshoe Falls would be about 180,000 cubic feet. If the amount withdrawn on the Canadian side for Canadian use were 5,000 cubic feet a second, which it is not likely to be during the three years' life of these permits, the total to be withdrawn would not exceed ten per cent. of the volume of the stream, and considering the immense quantity which goes over the Horseshoe Falls, the diminution would not be perceptible to the eye.

I have given full hearing to the American Civic Association and others interested in the preservation of the Falls, but nothing has been brought forward that has any evidential force, to affect the soundness of these conclusions.

By my direction, Captain Charles W. Kutz, of the Corps of Engineers, U. S. Army, made an investigation into the circumstances of each corporation applying for permits for diversion or transmission. The subjects upon which Captain Kutz was ordered to report are described in my memo-

random opinion of July 14, 1906, as follows:

"It is necessary that the Secretary of War should know before final action is taken by him, in the matter of permits, for transmission, the capital already invested in the Canadian companies, the degree of completion of the plant, the amount likely to be sold on the Canadian side of the current, the time when the plant shall be ready for operation; the amount now actually produced; the amount now actually transmitted to the United States; the amount invested not only in the production of the current but in the plant and machinery for its transmission, including the poles and wires, and all the details; and also the capital invested by the American companies who are to receive in the first instance the current thus produced; the forms in which that capital is, and the contracts into which they have entered both with the Canadian companies and with the companies or persons to whom they expect to sell the current; the dates of these contracts, and all the circumstances tending to show the extent of the injury that a refusal to grant the permits requested would cause to the investment of capital, together with the question of whom the contracts were made upon which the claims for the use of current are based, with a view to determine the good faith with which those contracts were entered into; and whether the threatened passage of law induced their making."

Captain Kutz has made a report both with respect to the companies applying for permits on the American side and those applying for permits on the Canadian side, and I wish to express my great satisfaction at the thoroughness and spirit of judicial fairness with which Captain Kutz and those associated with him have done their work.

Taking up first the applications for permits for diversion on the American side, there is no room for discussion or difference. The Niagara Falls Power Company is now using about 8,600 cubic feet of water a second and producing about 76,630 horsepower. There is some question as to the necessity of using some water for sluicing. This must be obtained from the 8,600 cubic feet permitted, and the use of the water for other purposes when sluicing is being done must be diminished. The Niagara Falls Hydraulic Power & Manufacturing Company is now using 4,000 cubic second feet, and has had under construction for a period long antedating the Burton Act a plant arranged to divert 2,500 cubic second feet and furnish 36,000 horsepower to the Pittsburg Reducing and Mining Company. A permit will, therefore, issue to the Niagara Falls Hydraulic Power & Manufacturing Company for the diversion of

6,500 cubic second feet, and the same rule must obtain as to sluicing as already stated.

As the object of the Act is to preserve the scenic beauty of Niagara Falls, I conceive it to be within my power to impose conditions upon the granting of these permits, compliance with which will remedy the unsightly appearance that is giving the American side of the canyon just below the falls on the American side where the tunnel of the Niagara Falls Power Company discharges and where the works of the Hydraulic Company are placed.

The representative of the American Civic Association has properly described the effect upon the sightseer of the view toward the side of the canyon to be that of looking into the backyard of a house negligently kept. For the purpose of aiding me in determining what ought to be done to remove this eyesore, including the appearance of the buildings at the top, I shall appoint a committee consisting of Charles F. McKim, Frank D. Millet and F. L. Olmsted to advise me what changes at an expense not out of proportion to the extent of the investment can be made which will put the side of the canyon at this point from bottom to top in natural harmony with the Falls and the other surroundings, and will conceal as far as possible the raw commercial aspect that now offends the eye. This consideration has been kept in view in the construction of works on the Canadian side and in the buildings of the Niagara Falls Power Company above the Falls. There is no reason why similar care should not be enforced here.

Water is being withdrawn from the Erie Canal at the Lake level for water power purposes, and applications have been made for permits authorizing this. Not more than 400 cubic feet is thus used in the original draught of water that is not returned to the canal in such a way as not to lower the level of the lake. The water is used over and over again. It seems to me that the permit might very well be granted to the first user. As the water is taken from the canal, which is state property, and the interest and jurisdiction of the Federal government grew out of the indirect



effect upon the level of the lake, the permit should recite that this does not confer any right upon a consumer of the water to take the water from the canal without authority and subject to the conditions imposed by the canal authorities, but that it is intended to operate and its operation is limited to confer, so far as the Federal government is concerned, and the Secretary of War is authorized, the right to take the water and to claim immunity from any prosecution or legal objection under the fifth section of the Burton Act. I shall refer the form of permit with these directions to the International Waterways commission to prepare.

I come now to the question of the permits to be granted to the applicants for the right to transmit electrical current from plants generating it on the Canadian side from the Niagara River.

The applicants are four: The International Railway Company, which applies for a permit for 8,000 H. P.; the Niagara, Lockport & Ontario Company, speaking in its own interest and that of the Ontario Power Company, for 90,000 H. P.; the Electric Transmission Company, speaking for itself and the Electrical Development Company, for 62,500 H. P.; and the Niagara Falls Power Company, speaking for the Canadian Niagara Power Co., for 121,500 H. P.

Captain Kutz recommended that the International Railway Company be not granted any permit, but that out of the 160,000 H. P. 2,500 be reserved in order that it might be granted to the International Railway Company when that Company shall have obtained permission from the commissioners of the Queen Victoria Niagara Park to transmit the current through the Park. The question of the Company's right is pending before the Dominion Government. Some years prior to 1901, this Railway Company, which owns all the railways in Buffalo and neighboring cities and towns, bought a Canadian electric railway running from Chippewa to Queenstown, together with a bridge just below the falls, and one at Lewiston, so as to make a loop with the railways on the American side. For this Canadian railway, the applicant paid \$1,323,000. It had a small power plant located

in the Queen Victoria Park, and under its charter could only use power generated therefrom to run the Canadian railway. In 1901, this charter was amended so as to permit the use of electricity for its railroads on both sides, and the plants have been developed by the expenditure of \$265,000, so that it now can generate 36,000 H. P. The effective head is 68 feet, so that it takes about twice as much water to develop this power per horsepower as in the great plants I shall hereafter describe. It is quite clear that the original investment in the purchase of the railway was not made to secure the transmission of electric power across the boundary, because there was no power to do so under the charter. The subsequent investment of \$265,000 can perhaps be said to have been made with this in view. Captain Kutz recommended that 2,500 H. P. be reserved for this company. The commissioners of Queen Victoria Park refused to approve the plans of this company for a transmitting line to the boundary, so that it cannot now use the electricity except on the Canadian line where it uses 1,240 H. P. It generates now 8,600 H. P. The permit of 2,300 H. P. would effect a saving of \$30,000 a year. The investment for transmissions to the United States does not exceed \$265,000. All that can be reasonably expected from the outlay under the circumstances is not to exceed 7 per cent. of the remainder, or about \$18,000. The permit should not, therefore, issue for more than three-eighths of 2,800 H. P. or 1,500 H. P. The fact that it may generate 8,000 H. P. by the expenditure of \$150,000 I do not regard as important, and I carry out the purpose of Congress in taking away any motive for making such an investment. The amount of 1,500 H. P. will be reserved to await the decision of the Dominion government in the controversy between the International Railway Company and the Commissioners of Queen Victoria Park. This leaves out of the 160,000 H. P. 153,500 H. P. to be distributed to the other three companies. Let us consider their financial status and prospects.

The Ontario Power Company was incorporated in 1887, and there was no limitation in its charter upon the amount

of power which it might generate. Its plans, however, were subject to the approval of the Commissioners of Queen Victoria Park, and plans for its works have been approved for 180,000 H. P. The head works for this amount have been constructed and located above the first line of rapids. It was necessary under the plans to construct three conduits through the park. Only one of these conduits has been constructed, and it has a capacity to supply six generating units, three for 10,000 H. P. each and three of 12,000 each, or 68,000 H. P. in all. The cost to complete the six units and thus produce 56,000 is \$6,500,000. The amount required to complete the plant to the projected size, producing 180,000 H. P. would be \$5,500,000 additional; and the amount required to produce 120,000 H. P. would be about \$3,200,000. In addition to this, the Ontario Transmission Company, an auxiliary company to the main power company, has expended about \$1,000,000 in transmission, right of way and plant, and the power company has entered into contracts for the furnishing 5,000 H. P. with an option by the purchasers to increase this to 13,000 for Canadian consumption. The Niagara, Lockport & Ontario Company of New York is affiliated with the Ontario Power Company, and it has constructed a very elaborate transmission plant from the international boundary to Lockport, from Lockport to Buffalo, and from Lockport by way of Rochester to Syracuse. It has expended \$2,785,000 of which \$1,200,000 was for right of way and \$1,062,000 for construction. Its capacity for transmission from the International Boundary to Lockport is 60,000 H. P., and there is the same capacity from Lockport to Buffalo; from Lockport to Syracuse it has a capacity of 10,000 H. P., and a second line of greater capacity is under construction. It claims that its investment will amount, when its transmission lines are completed, to upwards of \$4,000,000 and certainly the expenditure will reach \$3,000,000.

The Electrical Development Company received a charter 5 Edward VII, and was authorized to take 125,000 H. P. or 8,000 cubic feet a second. The head works, wheel



pit and tail race have been completed for 11 units of 12,500 H. P. each. The power house has been completed for seven units, but the machinery installed and constructed for is only four units. The completion of the four units will involve the expenditure of \$6,300,000 and it may be increased to 11 units, or 123,000 H. P. by the expenditure of \$1,576,000. This company has erected a transmission plant to Toronto which will convey 20,000 H. P. and that will involve an expenditure when completed of \$2,610,000. The demands for Canadian consumption which this company will satisfy, are about 30,000 H. P. There is an electrical transmission company of American origin and charter affiliated with the company, which has expended about \$246,000 and has a relation to what is called the Nicholl syndicate, which owns interests in gas and power companies and in an electric railway company from Buffalo to Rochester, which is under construction. It has franchises in its own name in seven towns and cities, but the enterprise is largely inchoate and the investment is in prospect rather than actual.

The Canadian Niagara Power Company was organized in 1892 by the same persons who were interested in the Niagara Falls Power Company, the pioneer of electrical power companies on the American side. It is not limited in the quantity of power which it is to use and its plans are subject to the approval of the Commissioners of the Queen's Park. Plans have been approved for 120,000 H. P. which means 11 units of 11,000 H. P., with one of these as a "spare" which makes its normal capacity 110,000. Its head works, wheel pits and tail race tunnel are completed for the full development. Five units have already been installed and its power house and transformer have been completed for five units. It has cost \$5,550,000, and to make 11 units would cost \$1,200,000 more. It has an underground conduit connecting the Canadian plant with the American plant of the Niagara Falls Power Company, with a capacity of 128,000 H. P. transmission, with cables in it of the capacity of 32,000. It has a separate transmis-

sion line fifteen miles along the Niagara River to Fort Erie with towers to carry the lines across the river, all of which transmission plant cost \$436,000. It sells in Canada 1,340 H. P. with option to purchasers to take 4,337 H. P.

From what has been said it will be seen that the Ontario Power Company has now invested or under contract \$6,500,000, which will produce 56,000 H. P.; that it and its affiliated companies have expended \$1,000,000 for transmission in Canada and about \$3,009,000 for transmission in the United States.

That the Electrical Development Company has invested \$6,300,000, which will produce 50,000 H. P.; and a transmission line in Canada of \$2,500,000 and perhaps \$300,000 in transmission line in the United States.

That the Canadian Niagara Power Company has invested \$5,350,000 which will produce 55,000 H. P.; and \$500,000 in transmission lines in the United States.

Captain Kutz recommended the allowance to the Ontario Power Company of a permit for 60,000 H. P.; to the Canadian Niagara Falls Power Company the same amount, 60,000 H. P.; to the Electrical Development Co. 37,500.

I think the Ontario Company is entitled to a larger allowance than the other two companies, because it generates 11,000 H. P. more than the Niagara Falls Company, and 16,000 H. P. more than the Electrical Development Company. It has invested \$200,000 more in its power plant than the Electrical Development Company and \$1,000,000 more than the Canadian Niagara Falls Company. It uses for the production of one unit of horsepower perhaps 15 per cent. less of water than the other two companies. But more than all, it has expended \$3,000,000 in a transmission line from the International Boundary to Rochester, Syracuse, Lockport and Buffalo. This investment is almost wholly dependent for use and profit on the importation of electricity from Canada. Captain Kutz reports that 60,000 H. P. will enable the company to secure a reasonable return on the transmission investment after paying proper amount for the power at the boundary. This would leave

to be divided between the other two companies 99,000 H. P. and objection is made to this discrimination against them in favor of the Ontario Power Company because their plants are so arranged that by the expenditure of a million and a quarter the Niagara Company could increase its output to 110,000 H. P. and by the expenditure of a million and a half the Development Company could increase its output to 130,000, whereas the Ontario Company must expend \$6,500,000 more to reach its full capacity of 180,000 H. P., or about \$3,200,000 to reach a capacity of 130,000 H. P. While this circumstance is entitled to some weight against proportioning the allowance to the capital actually expended on the power plants or the horsepower now produced from the present installations, still I think the considerations already suggested, especially the special expenditure for long distance transmission really outweighs everything else in requiring that if possible a sufficient amount be allowed to pay a reasonable profit on that investment which is wholly dependent on transmission.

Coming now to the division between the Niagara Falls Company and the Development Company, the conclusion is not so easy. The Development Company has invested about three-quarters of a million more on its power plant than the Niagara Company, but under its present installation it cannot produce as much horsepower by 5,000. It has expended \$2,500,000 to carry 20,000 horsepower to Toronto and has contracts for 10,000 more. The Canadian business does not pay as well as the American business, especially that of the Niagara Company, which is quite profitable under its existing contracts. Considering these contracts it seems to me that with its slight cost of transmission and the advantageous situation that it enjoys in respect to its affiliated American Company, an allowance of 52,500 H. P. for the Niagara Company will enable it to fulfill all its probable demands at a good profit. The works across the river produce 76,300 H. P., and adding 52,500 H. P. makes 128,800 H. P. The American Company now earns 9 per cent. on its stock of \$4,000,000 and



interest on a bonded indebtedness \$9,000,000. It has contracts requiring a maximum of 102,000 H. P. but the call on its capacity has never exceeded 25,000 H. P. because the calls do not coincide. On the capital invested, there is no likelihood that the Niagara Company will suffer a loss. It will not make as much as it would have made had it been allowed to transmit its full capacity after building the contemplated additions to its installation but the act only intended to save investors from losses on the plant actually invested, not to compensate them for prospective gain.

This leaves for the Electrical Development Company 46,500 H. P. to transmit to the United States after producing 30,000 H. P. and transmitting it to Toronto and elsewhere. This would justify the company in increasing the number of units in its installation if it could secure transmission to the United States. It is probable that the amount is not enough to justify the elaborate outlay required for transmission to American consumers, and this reduces the value of the permit; but I cannot think that it will not be able to arrange for the disposition of transmissible current at the boundary at such figures as to be profitable, even if the amount it makes per horsepower be less than that which the American companies realize, because of their greater facility for reaching customers, the one through the Rochester transmission plant and the other through the American Niagara Company's plant and good will. Under this arrangement and allotment the Canadian Company becomes the only one which, assuming a demand for its American delivery, will be justified in increasing the capacity of its power plant by installing more units. The demand in Canada for the product of the Ontario and Niagara companies may grow some but not very much, so that they are likely to be confined to present installation.

Before closing I ought to notice a claim of the Niagara Company that it has by its charter a preferential right over the other two companies, so that it ought to be allowed its full 110,000 H. P. for transmission before the other two companies receive permits to transmit any cur-

rent at all. The preference claimed is really only a priority in taking water from the river, and cannot be reasonably extended to apply to rights to transmit current when there is no lack of water for all.

The Niagara Falls Power Company and its Canadian other self ask that the two permits to them shall contain a provision by which in case of a reduction of the amount of water diverted on the American side below the permitted limit, a corresponding increase beyond the limit permitted on the Canadian side may be authorized. This privilege must be denied. The American diversion and the Canadian transmission must be kept separate in the permits and should be absolute and not variable. It would form an uncomfortable precedent in other cases.

It has been asserted by persons who profess to have information that the three companies here seeking permits are looking forward to an amalgamation of interests or a combination for the purpose of keeping up the prices of electrical power by avoiding competition that will deny to the public the benefit it is entitled to enjoy from the natural water power that these companies use at comparatively small benefit to any one of the governments which authorize its use. This is denied by the applicants. Just what effect the existence of such a combination ought to have to require a revocation or modification of these permits is a matter of grave doubt, but should evidence in proper form of the existence of such a combination be brought to me as a ground for the modification of the action now taken, it will be given careful consideration.

The order for permits will, therefore, be for

The International Railway Company.....	1,500
The Ontario Power Company.....	60,000
The Canadian Niagara Falls Power Company.....	52,500
The Electrical Development Company.....	46,000

The Chief of Engineers and Captain Kutz will prepare the permits after consultation with counsel for the respective companies. An order should also be entered detailing Captain Kutz to report a plan for the supervision of the operation of these companies under the permits, with a view to secure strict compliance with their terms.



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NEXT YEAR.

Doubtless the most procrastinating of individuals whose work constantly drives him, dreams of some day overcoming the demon who sits in the saddle, though just how or when does not quite appear. If it is true that a great man gathers power in action in contrast to the less successful man who expends it, the reason is possibly to be found in the great man's complete command of his resources. He is forehanded. He knows what he hopes to accomplish and he is ready at the right time to develop the campaign and watch results with keen delight.

There are many Chautauqua circles which are really eager to make the new year's work an opportunity for serious study. They have libraries and they would like to use them. But often a circle neglects to look ahead until the year is actually open, and then the pleasure of making leisurely investigations is lost because of hurried efforts to catch up. A few words of suggestion therefore may be timely:

1. Let your program committee provide itself with several sets of books early, in August, if possible.
2. Secure from the C. L. S. C. office a copy of the "Topical Outline" for the year if such has not reached you.



3. Look over the bibliography in Mr. Commons' book and see what books are available in your library. The government publications contain much material of very great interest and your librarian can easily secure these.

4. Look over your own community and see at how many points the immigrant question touches it. What nationalities have you? Where do they live? What are their occupations? You will find settlement and church workers who know the different localities and can guide your investigations. Then be ready when the circle opens to assign to each of several members who may volunteer, some part of the field upon which to make a report. Other interesting and closely related questions are these: Are there any native art industries in your town carried on by foreigners? How has household service been affected by the immigrant situation? etc.

For the first two months of the year we shall study the immigrant of today; then we take up the story of American literature to see how both the earlier and later stock have found literary expression for their ideals. After this with the help of Miss Addams' clear insight we shall see how the great changes in our national life are to be interpreted. If the Circle's program committee gives a little preliminary investigation to local conditions the Circle will find the profit and enjoyment of its year's work increased ten fold.

"AS OTHERS SEE US."

Probably most of us have suffered from the depressing experience of coming upon ourselves quite unexpectedly as portrayed in some unfriendly mirror which tended to enhance our less pleasing characteristics. In our daily consultations with our own mirror we had been in a subjective state, unconsciously adding to the image there reflected, some interpretation of its graces colored by our feelings and aspirations—and we had found the image by no means unlovely. But this harsher experience was distinctively objective. It was as if we were some one else looking critically at that particular human being which must from the nature

of things possess the most absorbing interest for us. It is quite probable that after the revelations made by the unfriendly mirror we tried in some fashion to improve upon the result. We discarded some garments—manifestly more shabby than we had supposed. We found it desirable to hold ourselves more erect. We had resented the picture. Nevertheless it made an impression.

In an "American Year" of study, one can hardly imagine a more interesting and profitable experience than to see our national traits objectively—as the Englishman, the Frenchman, the German has seen them. It was an American who once said, "I gain nothing by being with others such as myself, we only encourage one another in mediocrity." This was putting the provincial point of view in a nutshell—encouraging one another in mediocrity. The genuinely educated man must be a citizen of the world though he never moves far from his own hearthstone, and to see our country and ourselves through the eyes of critics whether competent or prejudiced is a wholesome experience. Every CHAUTAUQUA reader as he takes up Mr. John Graham Brooks' fascinating series of studies entitled "As Others See Us," beginning in the September CHAUTAUQUAN, will be surprised at the amount and variety of foreign criticism which has been bestowed upon America. In Mr. Brooks' skilful handling this study will be an "educative" experience.

#### "WHO IS THE AMERICAN?"

One cannot read a Danish immigrant's story of his life, as published in THE CHAUTAUQUAN for July, 1906, without realizing the tragedies which take place all about us among our newly arrived European neighbors, nor how on the other hand, help at the right time may turn the scales decisively. As the Dane put it, describing his experience on an Illinois farm:

"An angel walked across the road to me one day while I was hoeing in the cornfield, an angel with a freckled face, wearing a dilapidated straw hat, and bare footed, with one pant leg rolled up higher than the other. That was the neighbor's boy. He began to talk to me about my country and about our old King and his

family and we managed to understand each other quite well. He was different from the big boys down at our house. When I tried to say anything and couldn't find the proper words to express it, he could nearly always guess what I was trying to say; then he would help me out, and without laughing at me."

We are coming to appreciate more and more that the immigrant question is the big one in America today underlying all our modern problems of industry, race assimilation, politics, crime, etc. In what better way then can Chautauquans study the history of the United States in this coming American Year than from the race point of view.

This opportunity is made possible by the special publication for the C. L. S. C. by Mr. John R. Commons of a compact little book entitled "Races and Immigrants in America," of which a competent critic says: "We do not recall another book of its size that presents so much important and essential information on this vital topic." This will be the first C. L. S. C. book for the year, and while under Mr. Brooks' leadership we are discovering ourselves as the European critics have seen us, we shall be discovering also that the kaleidoscope of immigration has so marvellously changed the picture in the last quarter of a century that a new nation seems to be molding itself under our very eyes.

"NEWER IDEALS OF PEACE."

Very fortunate has Chautauqua been in securing for this American Year a book of remarkable ethical insight and power—Miss Jane Addams' "Newer Ideals of Peace." The impression which this little volume has made upon more than one critic and student of American life has been profound. The editor of *Collier's Weekly* published a remarkable editorial upon it:

"We have been slowly digesting (now several weeks) Jane Addams's latest volume. It is a book of which it takes many days to appreciate even fragmentarily a single chapter, so packed is each with new and reconstructive thought. To us it seems the most comprehending talk yet given about how to help humanity in America today. As these words are written, Mr. Harriman's activities are being discussed fully in the newspapers of the land, and, according to the laws of journalism, should be the basis for the most con-



spicuous editorial position at our command. Let them wait. There are conditions more important—conditions which we would fain do much to meet, had we the information, the insight, the accurate heart of the woman whose 'Newer Ideals of Peace' is the inspiration of this note. At present we are but advertising this volume to our readers. In weeks and years to come traces of it will be scattered in our pages, as vital gems affecting the conduct of this sheet."

The trilogy of studies of America today—Mr. Brooks' "As Others See Us," Mr. Commons' "Races and Immigrants in America," and Miss Adams' "Newer Ideals of Peace" will surely make this a fruitful and inspiring year for every Chautauqua reader.



But we cannot interpret our civilization wholly through the insight of the sociologist. We must listen for its message as the poets have sung it to us, and with the novelist and story writer must see the charm and beauty of daily life as they are revealed to the sympathetic and imaginative observer. Miss Katharine Lee Bates in her "American Literature" will point out in inimitable fashion the close connection between letters and life in America's development, and Mr. Horace Spencer Fiske in his "Provincial Types in American Fiction" will show how old and varied is the race question in this land and how it has contributed a peculiar richness and variety to our literature.

#### STUDIES IN AMERICAN PAINTING.

In art it is a long way from provincial America borrowing its ideals from the old world, to the twentieth century school of American artists whose mural paintings point to a distinctly new and native development. Mr. Carnegie's widely scattered libraries mean an increase of picture galleries, and loan exhibitions are to become more and more available for people who are remote from the great art centers. Schools and civic clubs are beginning to realize how they may beautify public buildings with works of art and the time is coming when the artist not less than the soldier will be a popular hero. To trace the growth of this

significant movement in America and see how it has been stimulated or retarded by social conditions will be a delightful experience for Chautauqua readers. Miss Edwina Spencer who so skilfully handled the subject of American sculpture in THE CHAUTAUQUAN four years ago, will discuss "American Painting" in a series of articles beginning with the September number. Abundant illustrations will make it possible for the reader to appreciate in some degree the nature of the development of painting in America.



#### NEWS FROM READERS AND CIRCLES.

A number of new books with bindings of more or less individual character, attracted the attention of the members whose seats were hard by the Round Table. "What an odd title—'Alice-for-Short,'" commented a Minnesota reader as she stumbled slightly over the hyphenated words. Pendragon held up the book in question and with it a companion volume bound in dark blue cloth. "You remember," he said, "that we were to discuss some of the new books at this meeting. We may as well start with 'Joseph Vance' and 'Alice-for-Short,' for they seem to have captured even the most cautious of reviewers, one of whom hesitates to discuss the literary quality of 'Joseph Vance' because 'it is impossible to speak without a degree of enthusiasm which might invite suspicion of incoherence.' As you will note, these two books (Henry Holt & Co., \$1.75 each,) are by Mr. William De Morgan, an Englishman who is credited by competent critics with belonging to the school of Thackeray and Dickens 'the important fact is that he belongs to it and does not merely hang upon its heels.' As another reviewer puts it, 'When Joseph Vance swam into the ken of novel readers a few months ago there were many of us who felt that we could realize for the first time in our experience what it was to have lived in the days of "Pickwick" and "Pendennis."' So you see how the author has for the time being at least hypnotized his critics. But when you take up these charming volumes you will need no critic to tell you that they are worth while. In each book the unfolding of the personality of a child is the central motive of the plot and the art of the writer makes the setting of the story so real and so infinitely picturesque that the characters live and move beyond you with an indescribable charm.

"Then you will notice here also Mr. Howell's latest book, 'Through the Eye of the Needle,' in which his Altruria once more emerges. 'Not,' as some one has said, 'a thesis on future economics of the world at large, but a kindly satire, a sort of twentieth century parable.'"

"I notice you've a copy of 'The Saint,' by Fogazzaro," said a New Yorker as he scanned the books on the table. "I should like to mention that I read the book at Christmas time and found it profoundly interesting." "This note from Professor Richard Burton," said Pendragon, "quite bears out your impression. He suggests among important books of the year the entire trilogy of Fogazzaro—'The Patriot,' 'The Sinner,' 'The Saint.' They are all published by the Putnams, the second one of the series, 'The Saint' being the last to appear. These three novels really give one a remarkable view of contemporary Italy. The reader seems to get behind the scenes and discover the manifold aspects of a very complex situation. Italy seems forever seething with forces scarcely as yet under control."

"Many of you are undoubtedly interested in the modern drama and will appreciate another suggestion of Professor Burton's, namely, that you look into a new book entitled 'Sapho and Phaon,' by Percy Mackaye, a recent graduate of Harvard and a young man of much literary promise. We have already discussed at the May Round Table, as you will remember, Benson's 'From a College Window,' published by G. P. Putnam's Sons, and if you haven't read his inimitable chapter On Growing Older, by all means do so. 'The House of Quiet' and 'Beside Still Waters' indicate that this genial writer is wielding a strenuous pen though the atmosphere of his books is suggestive only of cloistered calm."



"Some of you have already schemes of reading which you are working out this summer, and I have purposely refrained from turning your attention to a long list of new books. The few which we have mentioned you certainly won't regret having read it.

"Now as this is our last meeting for the year, reports of closing exercises will be quite in order and we will give the delegate from Mt. Sterling, Kentucky, the first place."

"Our Circle," responded the president, Mrs. Griggs, "is composed of very busy women yet we find time for an astonishing amount of study outside of the regular lesson. We used THE CHAUTAUQUAN only in the Circle meetings and made our own programs.

"Our 'Oxford Day' program was one of our best, embracing a paper on the History of Oxford, and papers on Oxford's famous literary men, churchmen, military men, statesmen, and Cecil Rhodes and his scholarships.

"Our two afternoons with Shakespeare were both pleasant and instructive. Each member chose a play and came prepared to give in her own words the plot, the leading characters, and the most thrilling scenes, together with quotations from the play.



"Our Shakespeare play is now being rehearsed and we expect to produce it at an early date. We shall continue our meetings through the summer and instead of a regular program the Circle is divided into groups of four and those on duty for the day present anything bearing on our study that they deem interesting to the Circle. This gives scope for much originality and we have book reviews, original poems, sketches of writers, readings from various authors, and map studies. We expect to produce 'Cranford' later in the summer and with the funds obtained will buy a good American Encyclopedia to present to our public library. These busy mothers and housewives say the mental uplift is just what they have needed for years. We hope to send a few graduates through the 'Golden Gate' in 1910. We are receiving new members at every meeting and hope to have the largest Circle on record for our little town for next year's work."

The delegate from Beatrice, Nebraska, was the next to report. "I represent," she said, "the S. H. G. of our town and we have just held a really notable reunion. This little handpainted souvenir you will notice suggests the beautiful wild roses of our western prairies. This was our seventh annual banquet, and we had as our guests all Chautauqua graduates in the city, whether they had ever read or been connected with our circle or had lived elsewhere when reading. You can realize how broad our interests are when I tell you that we had letters of greeting from former members now scattered through many states and Canada. The program developed so much enthusiasm that the 'Prophecy,' which was one of its features, looked forward to an Alumni Association of graduates from this part of the state, and we have already taken steps to bring about such an arrangement.



"We are just a year behind you in banquets," remarked the next speaker from Warren, Ohio. "This is our sixth and I must admit also that we are not an S. H. G., but perhaps I may say with all modesty, a very promising undergraduate Circle—the Robert Browning. As compliment to the graduating class you will notice that we had the flower of 1907 painted upon our program with the C. L. S. C. mottoes printed in Old English as a suggestion of the English year. Seventy guests were present and without reflecting upon former banquets I think I can properly say that the speeches of the evening were rather unusual. Mrs. Bartholomew, our president, in introducing the toastmaster, made Chautauqua seem—what it is—something worth living for, and Mr. Estabrook, who presided, seemed to have the Depew quality of putting everybody in the right humor so that the addresses whether grave or witty made the happiest sort of an impression. We have

had such a splendid year of work that it was pleasant to look back over it in this way and realize what the Circle is really signifying in our lives and what it means for our community. At our last regular meeting we each gave answers to three questions, 'What part of the year's work did you like best?' 'What roll call?' 'What suggestion have you for the betterment of the Circle's work?' This census of circle opinion will help us in planning for next year."

"I notice," said Pendragon, as he glanced over some clippings, "that the Stoddard C. L. S. C. of Jamestown, New York, planned for a closing banquet at the Peacock Inn at Mayville early in June. The report of this festivity hasn't reached us but perhaps our imagination can supply the picture. Mayville, as many of you know, is at the head of Chautauqua Lake and from its hill top you can see Chautauqua itself with the bell tower looking out over the lake as if it were thinking of the circles and readers who often listen for the tones of the bell. The Stoddard Circle is five years old and has now eleven graduates who are planning to form the Excelsior postgraduate C. L. S. C. in the autumn, while the old Circle will continue with twelve members. They have all been enthusiastic over the English year. I suspect they will find the new American course quite as enthralling. There is another Circle in Jamestown to which I must allude here, the 'Plus Ultra,' a graduate Circle which has been giving exclusive attention to the Reading Journey Through England."



"There is a new Circle in Atlanta, Georgia," continued Pendragon, "which you will be particularly glad to welcome today. They are young and hopeful. The secretary, Miss Wesley, will tell us of their year's work."

"We are not a very imposing Circle," said the delegate as she glanced a little timidly at her appreciative audience. "We organized last September with six members and meet consecutively at each other's homes. We go direct from school and after a luncheon do the club work. The luncheon is very simple, but it saves us the trouble and time of going home for lunch and gives us a chance for a social chat. Teachers and working girls will find this a pleasant method of meeting. We have found freedom in criticism a very helpful feature of our cozy gatherings and we are all so eager to improve that no one thinks of taking offense. While we were studying Tennyson we taught his poems in school and so made a direct application of our reading. We enjoyed each book immensely and did a great deal in the way of apt quotations from them all. Then we had the very great good fortune of seeing five of Shakespeare's plays performed by excellent companies—Mer-

chant of Venice, Julius Cæsar, Cymbeline, Midsummer Night's Dream, and Merry Wives of Windsor. We all believe in Chautauqua and especially in the class of 1910!"

As the Round Table expressed its approval of the spirit of 1910, Pendragon introduced another member of the same class, Mr. LePage of Stamford, Connecticut. "This Circle," he remarked, "is a close connection of the famous 'Outlook' of Mt. Vernon, New York. It bids fair to make a name for itself in Stamford."

"Of course we hardly dare to measure ourselves by the standards of older Circles just yet," laughed the president, "but we started with a Circle of twelve members and the interest has grown so fast that at our last meeting we had over twenty-four. The Connecticut Assembly is not very far from us and doubtless some of our members will improve the chance to enlarge our Chautauqua experiences. You may expect to hear from us many times between now and 1910!"

"May I report our new S. H. G., for we feel rather proud of it?" The speaker thus introduced told of the work of the Circle at Assumption, Illinois,—A Circle already known to Chautauquans for its successful efforts in behalf of a public library. "We formed our S. H. G. in November, 1906," she continued, "and through its influence a large C. L. S. C. class was organized for 1910. We held a reception for the new members and they have started out so well that we do not feel any solicitude about their future." "With such a record," commented Pendragon, "we shall expect to see this S. H. G. speedily devoting itself to the Class of 1911. One report from Winfield, Kansas, and we must close."

"Ours is a Chautauqua town," said the delegate, Mrs. Wilson, "and cyclones and floods cannot quench our Chautauqua spirit as we had occasion to show a few years ago. Our Assembly is in its twenty-first year and the yearly sessions are looked forward to by all out citizens. We have three circles in the city, and one a little distance out. There are thirty-nine active members in the three city circles—nine of our College Hill Circle graduated last year but none felt that they could stop so all are enrolled for this year. We have enjoyed all the books greatly. 'Rational Living' required hard thinking and took deep hold of many of us. We usually follow the suggestive programs in some degree, deviating to suit our convenience and occasionally an outsider is asked to lecture on the topic of the evening. We have an annual meeting of all the circles who take turns in entertaining. Our circle always has a tent at the Assembly, furnished by the readers, two of the members serving each day as hostess and on the last day of the session we close with a banquet of C. L. S. C. members."



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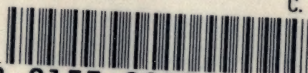




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